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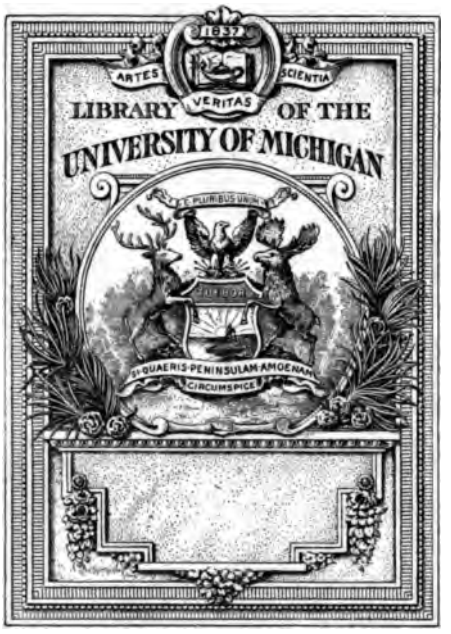

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AFFRAY AT BROWNSVILLE, TEX.

AUGUST 13 AND 14, 1906

PROCEEDINGS

OF A

GENERAL COURT-MARTIAL

CONVENED AT

Headquarters Department of Texas
San Antonio, Tex., February 4, 1907

IN THE CASE OF

Maj. CHARLES W. PENROSE

Twenty-fifth United States Infantry

WASHINGTON
GOVERNMENT PRINTING OFFICE
1908

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PROCEEDINGS OF A GENERAL COURT-MARTIAL CONVENED AT HEADQUARTERS DEPARTMENT OF TEXAS, SAN ANTONIO, TEX., BY VIRTUE OF THE FOLLOWING ORDERS:

SPECIAL ORDERS, No. 264. } HDQRS. DEPARTMENT OF TEXAS, *San Antonio, Tex., December 20, 1906.*

2. A general court-martial will convene at these headquarters at 10 o'clock a. m., Friday, January 4, 1907, or as soon thereafter as practicable, for the trial of such persons as may properly be ordered before it.

DETAIL FOR THE COURT.

1. Col. George Le Roy Brown, Twenty-sixth Infantry.
2. Lieut. Col. Louis M. Maus, deputy surgeon-general.
3. Lieut. Col. Charles J. Crane, military secretary.
4. Lieut. Col. Alfred C. Sharpe, Thirtieth Infantry.
5. Lieut. Col. Edward J. McClernand, First Cavalry.
6. Lieut. Col. Robert R. Stevens, deputy quartermaster-general.
7. Lieut. Col. Frank Baker, Ordnance Department.
8. Maj. Hamilton S. Wallace, paymaster.
9. Maj. Charles W. Taylor, Thirteenth Cavalry.
10. Maj. Henry D. Snyder, surgeon.
11. Maj. Charles J. T. Clarke, Twenty-sixth Infantry.
12. Maj. Charles A. Bennett, Artillery Corps.
13. Maj. John H. Gardner, First Cavalry.

Capt. Charles E. Hay, jr., acting judge-advocate, judge-advocate.

Upon completion of this duty the members of the court will return to their proper station.

The travel directed is necessary in the military service.

By command of Brigadier-General McCaskey:

C. J. CRANE,
Lieutenant-Colonel, Military Secretary.

SPECIAL ORDERS, No. 268. } HDQRS. DEPARTMENT OF TEXAS, *San Antonio, Tex., December 27, 1906.*

1. Paragraph 2, Special Orders, No. 264, current series, these headquarters, is amended so as to direct the general court-martial thereby appointed to convene at these headquarters at 10 o'clock a. m., Monday, February 4, 1907, or as soon thereafter as practicable.

By command of Brigadier-General McCaskey:

C. J. CRANE,
Lieutenant-Colonel, Military Secretary.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., February 4, 1907.

The court met, pursuant to the foregoing orders, at 10 o'clock a. m.

Present: Col. George Le Roy Brown, Twenty-sixth Infantry; Lieut. Col. Louis M. Maus, deputy surgeon-general; Lieut. Col. Charles J. Crane, military secretary; Lieut. Col. Alfred C. Sharpe, Thirtieth Infantry; Lieut. Col. Edward J. McClernand, First Cavalry; Lieut. Col. Robert R. Stevens, deputy quartermaster-general;

Lieut. Col. Frank Baker, Ordnance Department; Maj. Hamilton S. Wallace, paymaster; Maj. Charles W. Taylor, Thirteenth Cavalry; Maj. Henry D. Snyder, surgeon; Maj. Charles J. T. Clarke, Twenty-sixth Infantry; Maj. Charles A. Bennett, Artillery Corps; Maj. John H. Gardner, First Cavalry; Capt. Charles E. Hay, jr., acting judge-advocate, judge-advocate.

The court then proceeded to the trial of Maj. Charles W. Penrose, Twenty-fifth United States Infantry, who, having been brought before the court, introduced Lieut. Col. Edwin F. Glenn, Fifth United States Infantry, as counsel, and Capt. Pierce A. Murphy, First United States Cavalry, as associate counsel.

Miss Edith Burbank was duly sworn as reporter.

The order convening the court was read to the accused, and he was asked if he objected to being tried by any member present named therein, to which he replied in the negative.

The members of the court and the judge-advocate were then duly sworn.

The accused was then arraigned upon the following charge and specifications:

CHARGE.—Neglect of duty, to the prejudice of good order and military discipline, in violation of the sixty-second article of war.

Specification I.—In that Maj. Charles W. Penrose, Twenty-fifth United States Infantry, commanding the post of Fort Brown, Tex., after being on the morning of August 14, 1906, between 1 and 2 a. m., duly informed by the mayor of Brownsville, Tex., one Doctor Combe, that soldiers of his command had shot and killed one civilian of the city of Brownsville, Tex., and badly wounded a lieutenant of police of that city, did immediately thereafter and until daylight wholly fail and neglect to take or order sufficient measures or action by prompt inspection of guns or pistols or otherwise, or any due exercise of discipline, to detect the men engaged in said attack and killing, or any of them, or to restrain or bring them to justice for said crime. This at Fort Brown, Tex., August 14, 1906.

Specification II.—In that Maj. Charles W. Penrose, Twenty-fifth United States Infantry, being aware of the feeling of resentment in his command toward citizens of Brownsville, as a result of assaults upon certain individuals of the command. and having been notified by a Mr. Evans, of Brownsville, about 5 p. m., August 13, 1906, of an attack upon his wife by a soldier of the command, and knowing of the inflamed feeling existing in the town toward the soldiers as a result thereof, did nevertheless fail to give any orders to Capt. E. A. Macklin, Twenty-fifth Infantry, officer of the day, requiring special vigilance on his part or that of the guard; or to make frequent inspections, or any inspections during the night after 12 o'clock; and did wholly fail and neglect to take or order sufficient measures or precautions to hold at the post the men of his command, or in any manner to watch, restrain, or discipline said men; by reason of which failure certain men of his command, to the number of about 12 or more, were enabled to assemble, and did assemble, armed with rifles, and did proceed to the town of Brownsville, Tex., and did then and there shoot and wound and kill certain citizens thereof. This at Fort Brown and Brownsville, Tex., August 13 and 14, 1906.

To which the accused pleaded as follows:

To the first specification, Not guilty.

To the second specification, Not guilty.

To the charge, Not guilty.

The judge-advocate here addressed the court as follows:

I have in the course of preparation, and I think in a state of completion, a map of the town of Brownsville and the post of Fort Brown, which is contiguous to the town. This was not to be introduced in evidence, but merely for a graphic representation of what took place at certain times, so that the court could clearly understand what was meant when certain circumstances

and their localities were mentioned, members of the court not all being familiar with Brownsville, but when this map was exhibited to counsel for the accused it was found to be not quite accurate, and steps are being taken to make this map as accurate as possible, so as not to convey any erroneous impression to the court, and I would like to request a continuance until this map can be completed, which will not take more than an hour or two.

To which counsel for the accused replied:

We have no objection to an adjournment until such time as the court may see fit. We would like at this time, however, to ask the judge-advocate if all his witnesses are in the court room, as we shall ask to have excluded from the court room during examination of the witnesses those who have not been examined when we commence to take evidence.

To which the judge-advocate replied:

I know that a large number of my witnesses are present. I am not familiar with all of them, but I do see some I recognize as witnesses, but as I will not introduce any evidence now, I do not think it necessary to clear the court.

To which the counsel replied:

In regard to the map, I would state that when we examined the map from which this has been copied, the persons familiar with it informed us, and Major Penrose himself is certain, there are very grave errors in it and, while we are not prepared to admit this map as evidence, we recognize the fact that it will be a material assistance to the court, and we recognize further that in using this map the court is bound to have in mind a constant impression or [of] what it is and, therefore, we insist it be as accurate as it can be, and as long as this map is to be used we would like to have a copy of it attached to the proceedings so that it may be used with the record and seen by the reviewing authority. We make this statement now so you will understand just how we feel about it.

To which the judge-advocate replied:

I think the counsel is well aware that this map was not intended to be introduced in evidence in any way, and if the map is not accurate, as he says, the court will certainly get an erroneous impression.

There being no objection, the court then took a recess until 2 o'clock p. m., at which hour the members of the court, the accused, his counsels, the reporter, and the judge-advocate resumed their seats.

The judge-advocate then addressed the court as follows:

The prosecution desires to introduce as an interpreter, Mr. John I. Kleiber, of Brownsville.

To which the counsel for accused replied:

The defense wishes to object to Mr. Kleiber or any other citizen of Brownsville acting as an interpreter before this court until it is made manifest that there is no suitable interpreter who is not contaminated by influence that must exist and have existed in the city of Brownsville since last August, or at the time this matter occurred, and we are particular upon this point because this question has been brought into the domain of politics and has been discussed generally over the country, and we do not believe we would be doing ourselves justice to admit as an interpreter anyone from the city of Brownsville or that neighborhood, and until we are shown to our satisfaction that there is no one else available, we shall insist on the objection being considered.

To which the judge-advocate had no reply to make.

The accused, his counsels, the reporter, and the judge-advocate then withdrew, and the court was closed, and on being opened the president announced, in their presence, as follows:

The court sustains the objection of the accused to the employment of John I. Kleiber as chief interpreter, but authorizes his retention as additional interpreter and instructs the judge-advocate to employ a chief interpreter who shall be satisfactory to the court-martial.

Mr. GEORGE W. RENDALL, a witness for the prosecution, was duly sworn and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please state to the court your name, residence, and occupation.—A. George W. Rendall, Brownsville, Tex.; occupation, mechanical engineer.

Q. Mr. Rendall, we have on the wall there a map supposed to represent the town of Brownsville; will you go to that map and point out to the court your residence?

(Witness goes to map and points out residence.)

Q. That is the corner of what streets?—A. Elizabeth street and what we call Fifteenth street.

Q. Where were you on the night of August 13, 1906?—A. I was in the upper story of this building where I live, and my wife.

Q. Did anything unusual occur there that night of August 13, 1906, in that vicinity, Mr. Rendall? If so, please state what.—A. Well, something near midnight—I don't know, because I had been to sleep—I was woke up by shots firing, as I supposed at the time it was an alarm of fire.

Q. How many shots were fired at first?—A. Well, approximately there was four or five shots fired. I got up out of my bed and looked out of the window facing the garrison.

Q. When you got up and looked out what did you see?—A. I saw some men moving apparently from the lower barracks, next to the river, up about the middle of the second barracks. I don't know how those barracks are numbered; there is a street running to Elizabeth street, the opening in between the two barracks—soldiers' quarters—as you go in. It was the lower one, next to the river, and there was two lights kept burning there when the moon is not shining, there at the entrance of the double gate, and the lights were sufficient to——

Q. That is the continuation of Elizabeth street, you say?—A. Yes, sir—Show the troops of the post that were moving, but at the time I saw the firing they had got up a little past that, away from that light, and the only thing I could tell that the firing was from, was by the flash of two different shots that were fired; those shots were apparently fired at an elevation. That led me to believe that it was an alarm of fire, and as I could not see nothing out of that window facing the post, I went to the window on the north side of the same room and looked for a light there and, seeing nothing there, I went to the south side looking for a light again, and told my wife at the time it must be a fire, but after seeing nothing I went back to the front window and then I saw a number of men—I judge from 15 to 30—moving up that way, and I heard them talking in a very low voice—suppressed voice—and as they got up near the alley, at about the center, I think, of the second post from the alley end, that is, at the left hand side of the entrance——

Q. Just explain what you mean by second post.—A. I mean the barracks, the quarters of the soldiers—and one of them spoke in a

voice that I could hear, saying, "There they go," or "Here we go," I could not say which, and then they made a break for the wall.

Q. The men you saw up to that time, as I understand, were inside the garrison wall?—A. All of them; yes, sir.

Q. What kind of men were these, or could you tell?—A. I could tell first those that passed through the reflection of the light up from the lower post that they were colored soldiers.

Q. By post you mean barracks again?—A. Yes; and the men I saw go over the wall, of course, I supposed were the same men.

Q. How many men did you see passing the lights at the garrison gate?—A. I don't think I could positively say; there were more than 5 or 6 passed the gate, but, as I say, I was only looking for an alarm of fire and was looking to see where the fire was; I did not pay any attention to the number of men, and it is merely a thought afterwards that would make me say anything like accurately the number of men there were.

Q. Did you think the number of men, probably 5 or 6 or more, were soldiers or civilians?—A. They were soldiers.

Q. What nationality—Americans or Mexicans?—A. Colored soldiers.

Q. These soldiers were armed, or not?—A. Yes, sir; they were armed—those in the reflection of the light that I saw—those that I saw shooting, saw the flash from their guns.

Q. Did these men leave the reservation or not?—A. They mounted the wall, jumped over into the street, and then they passed from my vision after that time.

Q. Were those men in a loose formation, or did someone appear to be in command?—A. They appeared to be in command of somebody; acted that way.

Q. What was the state of the barracks at this time; was there noise or silence about the barracks?—A. It was very silent.

Q. No noise or excitement?—A. No, sir.

Q. No exhibition of fear or anything of that sort by those in the barracks?—A. No, sir.

Q. Do you know whether or not there is a sentinel's post ordinarily running along the road back of the barracks?—A. They usually have one there—did have one there the last few days.

Q. Just where?—A. Passing along before the men's quarters—close in to the quarters inside the garrison wall, but in the night time I could not say.

Q. You saw no such sentinel at the time of this occurrence?—A. Not in the night; no, sir.

Q. Was the position of those lights you mention on the garrison wall such as would shine on the post of the sentinel?—A. It is possible they would, yes, sir; but I have never noticed a sentinel inside the garrison wall on duty after dark.

Q. Did you hear any other voices or sounds other than those of the men you saw go over the wall?—A. No, sir.

Q. No calls for help or anything like that?—A. Not immediately at the time; no.

Q. Did the men who went over the wall have the appearance of retreating or attacking?—A. They had the appearance, as I supposed at the time, of being in pursuit of some one.

Q. Did you hear any bugle call about this time?—A. Yes, sir; there was a bugle call, I think, within a few seconds after they leaped over the wall—that is the one I heard. I have understood since there was one before that, but I didn't——

Q. Was there any firing from the direction in which these soldiers had gone, after the call of the bugle sounded, sound of firing I mean?—A. There was firing, but not inside the garrison wall.

Q. But from the direction which these soldiers apparently took when they left the wall?—A. Yes, sir.

Q. After the bugle call?—A. After the bugle; yes.

Q. You heard no words spoken in Spanish that night?—A. No, sir; I did not.

Q. Was your house injured in any way that night?—A. I don't know as it was injured. There was a bullet passed through the house from the right-hand side where I stood looking at the garrison, just over my head, passed through the mosquito bar, and out through the other side of the house. My front room, I think, just 20 feet across inside the room from where the bullet went in to where it went out, there was an elevation of about 6 inches, which made me think that the person who fired the shot was up on some elevation; could not have been on the ground, because the angle would have been—unless the bullet was defaced in some way.

Q. Did you make any attempt, either by sighting through the hole or holes, or any other way, to determine from what point this shot must have been fired?—A. No, sir; I never did.

Q. How long did you remain looking from the window after your first arrival there?—A. After the first shots you mean?

Q. After you first got to the window, how long did you stay there? How long did you remain up gazing out of the windows after the shot passed through the house, or after the first shot was fired? At what time did you go to bed—how long after you had first gotten up?—A. I don't know. It was more than half an hour after the first shots was fired—in fact, the shots that went through my house—more than half an hour before I went to bed. I went to bed after they had sent out a relief. After the roll call an officer took some men up Elizabeth street right past my window.

Q. After which you went to bed?—A. Yes, sir.

Q. Did you recognize the face of any man in this party whom you say were soldiers?—A. The men that were doing the shooting?

Q. Yes; the men who were apparently doing the shooting.—A. Not positively; no; but the man who gave that order "Here we go" or "There they go," I thought at the time was a man who came to me two or three days previous to that wanting to rent a little cottage, stating he had been in the Army a long time and he wanted to bring his wife there.

Q. Did that man state he was in the Army at the time he was speaking to you?—A. Yes, sir; said he was a sergeant.

Q. Was he in the uniform of a soldier?—A. Yes, sir; said he was a sergeant.

Q. White man?—A. No, sir; a negro—full blooded.

Q. You never heard his name at that time?—A. Never asked the name.

Q. Ever see him after the night when the firing was done from the barracks?—A. No, sir; never did.

Q. Could you identify this man if he was brought before you?—A. I don't think I could.

Q. You didn't at that time notice whether he had any insignia on his hat calling for the letter of his company, or anything of that kind?—A. No, sir.

CROSS-EXAMINATION.

QUESTIONS BY THE ACCUSED.

Q. How old are you, Mr. Rendall?—A. I am 72 years of age.

Q. How long have you lived in Brownsville?—A. I have been in Brownsville and that vicinity of the country, my home, since the first of the Confederate war.

Q. What have you been doing all this time, sir?—A. Well, I have been engineering, and I was twenty-two years master mechanic of the Rio Grande Railroad, and in 1882 I quit that and went into the ice manufacturing—proprietor of the Frontier Ice Works.

Q. How long have you been wearing glasses, Mr. Rendall?—A. I have been wearing glasses since 1866.

Q. You have lost vision in one eye, I believe, have you not? When did you lose that, Mr. Rendall?—A. I lost that in 1866.

Q. Do you wear the glasses for distance or for reading solely?—A. For both; I have to change the glasses for reading, though.

Q. How long had you been to bed that night, Mr. Rendall, when you first heard this alarm?—A. If the time was at 12 o'clock when the shooting commenced, I must have been to bed about two hours and a half.

Q. Do you know what time it was?—A. I do not; I did not strike any light nor look at my watch or clock.

Q. As a matter of fact, have you given your evidence before, Mr. Rendall?—A. Several times.

Q. Will you tell the court to whom you gave this evidence, and the various occasions when you gave it?—A. I gave the evidence in the first instance to the committee who had been appointed by citizens of Brownsville to investigate the trouble—that was in Mr. Wells' office. The second time I gave the evidence to the investigation by Major Blocksom and another gentleman from Washington, Mr. Purdy.

Q. Have you discussed this with anybody else in Brownsville?—A. Well, I suppose so; I don't know.

Q. Will you tell us who you discussed it with?—A. Among ourselves—with everybody.

Q. Will you tell us when and where, and how often, with whom?—A. No, sir; I could not tell you.

Q. Can't you tell whether you have discussed it with any person at all?—A. No, sir.

Q. But you have discussed it many times?—A. Well, we have talked over the thing; yes; I have discussed it with my wife and other people living close by there.

Q. Did you compare notes with the people you call "we?"—A. No, sir; I never did.

Q. Never compared any notes?—A. No, sir.

Q. Can't you tell us any particular person besides your wife you discussed it with in the last six or eight months?—A. I don't think

I could. I suppose I have spoken of it, or it has been spoken of by others to me probably one hundred times since then. I could not identify individuals.

Q. Is your recollection of the facts as indistinct as your recollection of the people you have talked to?—A. Hardly, because the people I have talked to is numerous. Among ourselves we have talked of it very nearly every day—someone spoke about it one way or the other.

Q. And yet you can't remember any single person you discussed this matter with in Brownsville?—A. No, sir; I don't think I could.

Q. In these other testimonies you gave, first to the Citizens' Committee and subsequently to Major Blocksom and Mr. Purdy, did you give the hour at which this thing occurred?—A. No, sir.

Q. Sure about that?—A. Sure.

Q. That you gave it on neither occasion?—A. I gave it only as I had heard, because I did not strike a light. The first time I said it was a little after 10, because I thought I had only been asleep a little while.

Q. Didn't you mention some hour in your next interview?—A. If I did it was because that was what it was supposed to be.

Q. Didn't you mention the hour of 12 o'clock midnight, or thereabouts, in your interview with Mr. Purdy, as being the fixed hour?—A. I may have done so; yes.

Q. Did you fix the hour as a result of your discussion with your various friends in the city whom you call "we?"—A. Undoubtedly.

Q. Then you know nothing about the hour yourself?—A. No, sir.

Q. Which way does your house face, Mr. Rendall?—A. It faces on Elizabeth street, to the south, or west, rather, and on the Government reservation to the east, and to the north—that is, the room does—the house faces only on Elizabeth street, which is southwestern actually, because the town of Brownsville is not laid off east, west, north, and south diagonally with the compass.

Q. But the front of your house is toward Elizabeth street?—A. Yes, sir; but there is only one window on the Elizabeth street side of the room I was in.

Q. How many rooms in the upstairs of that house?—A. Three.

Q. How many in the front or toward Elizabeth street?—A. Three.

Q. All on Elizabeth street?—A. Yes, sir.

Q. Then those same houses have windows facing toward the back, or toward the alley?—A. Yes, sir.

Q. And you have windows facing toward the fort?—A. Yes, sir.

Q. What do you call the west window there (indicating the map)?—A. The west window would be the window actually toward Elizabeth street.

Q. I understood you to speak of the east window toward the fort; that is a mistake?—A. Simply because the house does not stand east, west, north, and south diagonally.

Q. The Government wall, I understand, runs east and west. How wide is that road of the Government between your house?—A. The survey of my lands, according to deeds I have, is 30 feet from the garrison wall, allowing an alley or street.

Q. That street is 30 feet wide there?—A. Yes, sir.

Q. How far is your house from the corner of the road and Elizabeth street toward the city?—A. Right on the street.

Q. Then this 30 feet includes the sidewalk, if any is there?—A. Thirty feet is on the east side of the house; 30 feet, side what we call Fifteenth street; that is 30 feet wide.

Q. Can you see that pointer there?—A. Yes, sir.

Q. You notice that mark right there?—A. Yes, sir.

Q. That is what you mean by Fifteenth street?—A. Yes, sir.

Q. How far is it from the wall, which I take it is on the further side of Fifteenth street, from your house—how far from that wall to that barracks that you call the post?—A. I do not know, sir.

Q. Well, give us a guess.—A. I think I should judge it is 60 feet.

Q. Will you go over there and put that pointer on that plat exactly where you saw those soldiers when the shooting first occurred?—A. The first men I saw were passing along about midway between this wall and here; I don't think there was more than 5 or 6 then; I know by the light that they were all soldiers. They passed from here up to about here, when I saw the first shots fired. They were almost directly opposite my window. Two of those shots fired that I saw the flash from were elevated naturally. That was what made me think it an alarm of fire. The men passed from there and when they got up here there was 30, more or less—I judge about 30—and they came nearly to the wall; when that loud voice was spoken they were about here, and then they started that way and jumped over the wall, and with my window closed I could not see after they jumped over the wall where they went.

Q. On that north side or northwest side of the road or Fifteenth street, is there a fence there along that front of your house?—A. Yes, sir.

Q. How high is that fence?—A. That's probably 5½ or 6 feet high.

Q. But you were in the second story?—A. Yes, sir; but that's a picket fence, an open picket fence.

Q. If I understand you correctly, you saw the men here when they fired, but they jumped over here and you could not see them?—A. I could see them go over the wall but I could not see where they went, and for a few seconds, or maybe two minutes, there were no more shots.

Q. Will you put your pointer exactly where you saw those men jump over that wall?—A. About here, I judge, about the center of that barracks. (Witness pointed to a place near what is the closet or toilet of B Company, Twenty-fifth Infantry.)

Q. Do you know, as a fact, that there is a toilet at this particular place, where I indicate with my pointer, used by enlisted men of the command?—A. Yes, sir; but it does not go against the wall. There is a distance between that toilet and the wall, I should judge, from 4 to 6 feet.

Q. How far is it from this corner here to that point there that is indicated by you, would you say?—A. I should say 150 feet.

Q. What kind of lights were those here?—A. Those were oil lights—oil lamps.

Q. How many candlepower would you say they gave?—A. It's hard to tell—from 50 to 60 candlepower.

Q. You got the reflection up there, did you?—A. No, sir.

Q. How far did you get that reflection?—A. Within 25 or 30 feet from the lights.

Q. So there was no reflection of candlelight at this point where

you saw them jump over?—A. No; I could not tell what kind of men were going over at all, only I supposed it was the same men I saw here.

Q. You are certain these men you saw jump over there were armed?—A. No, sir; I am not.

Q. Are you certain those are the same men you claim to have seen here?—A. No, sir.

Q. Are you certain that any men you saw over there were armed?—A. Not at all; I am only certain they had something that made flashes like guns, the two shots I saw.

Q. Could you see the guns?—A. No, sir; none of them fired down here where there was light enough to see.

Q. Could you see uniforms?—A. No, sir; I could not.

Q. Will you tell the court how you knew those were soldiers?—A. By the uniforms.

Q. And yet you say you could not see any uniforms?—A. Those that I saw pass here I saw the uniforms and saw that they were negro soldiers.

Q. And yet you say you can not say the men that jumped over here were the same you saw down here?—A. No, sir.

Q. Did you see these men have any arms at all?—A. No, sir.

Q. Did you see them jump over the wall at all?—A. I just saw the shapes and saw the men.

Q. Will you tell us how you knew those men were soldiers?—A. How do I know?

Q. That they were soldiers.—A. I can tell you are a soldier by your uniform.

Q. But I understood you to say you could not see these men's uniforms or their guns.—A. I could not see their uniforms or their guns at the time they mounted the wall and went over the fence—I could only see the ones in the light.

Q. As a matter of fact, did you at any time during that night see any of those men that jumped over the wall close enough to see their uniforms or their guns?—A. No, sir; I did not.

Q. Then, if you said before this that you recognized them by their uniform, you were mistaken?—A. No, sir; I am not mistaken, because those I saw were in the reflection of the light, but those I saw go over the wall were not in the light and I could not see whether they had on uniforms or not, but I know they went over the wall and in the street.

Q. How long was it after these first 4 or 5 shots that you got up out of bed?—A. I think I got up out of bed and looked out before those last 5 shots were fired; they were fired pretty close together.

Q. Did you put on your glasses before you got up?—A. Yes, sir.

Q. Where do you keep them?—A. On a stand close to my bed.

Q. You had no lights?—A. No, sir.

Q. But you had to put your glasses on in order to see?—A. Yes, sir.

Q. This is a 2-story house, with only 3 rooms on the upper floor; how are those rooms laid off; show us, Mr. Rendall.—A. Across that way and the hall through here, across there.

Q. And you were in this corner room?—A. Yes, sir.

Q. Did you have to go out of this corner room into the hall in order to see the back?—A. No, sir; this room runs clear across, and

there is a door in there that leads into the hall. One window here and one here and one here. (Witness here indicated that there was one window on the Elizabeth side of the street, one on the opposite side toward the alley, and one window on the Fifteenth street or garrison side, and that underneath there was a shed roof toward the alley.)

Q. Now, then, you got out of bed and grabbed your glasses, and where did you go?—A. To this front window.

Q. How long was that after the first shot was fired until you got to the window?—A. Probably thirty seconds.

Q. And you saw some men; which way were they going, and how many?—A. Up this way, 5 or 6.

Q. Will you indicate as accurately as you can where those men were?—A. Over there, a little nearer the wall than they was their quarters.

Q. How were those men dressed?—A. They were dressed like the infantry of the United States Army.

Q. Give us a little more detail.—A. I could not give you any more detail, because I don't know anything like the technical phrases of the uniform.

Q. Can you tell color?—A. Yes, sir.

Q. Give us the colors.—A. I don't know what you call it, sort of a drab, not a blue and not a white. I did not see any blue nor white about it; I should judge some of those men had no coats on, sort of a blue shirt; whether there was more than one that way or not, but it is my impression some were without coats.

Q. Just how many were there?—A. I could not tell; that's just my impression, because, as I say, I thought it an alarm of fire, and I paid no attention to the movements of those men at all other than to know they were there.

Q. You can't tell how many men there were?—A. Five or six.

Q. Did they have their guns?—A. Yes, sir.

Q. Sure about that?—A. I would not swear they had their guns; they did not have them on their shoulders; what they had was in their hands.

Q. Did they all have their guns?—A. I could not say about that.

Q. Did you tell either committee that they had their guns?—A. No, sir.

Q. Why did you omit that to the committee?—A. Simply because I was not positive they had guns; the only thing I know was the flash I saw from their hands—from their hips apparently.

Q. Do you know whether they fired a pistol or gun?—A. No, sir; I do not, but I think it was a pistol, because they held it that way.

Q. Why did you say they held it at their hips?—A. If it was a long arm it must have been, because I could not tell their shoulders from the flash; if it had been a long arm I could not tell it. I saw the flash go up that way which made me think it an alarm of fire.

Q. You don't know whether they were shooting a pistol or gun?—A. No, sir; I would not hesitate to say they were shooting pistols.

Q. Then they were not shooting from the hip?—A. I don't know where they were shooting from. I saw the flashes were near their faces, and the two I saw were colored men.

Q. How could you tell that?—A. Why, certainly, because the flash

of it showed in their faces just the fraction of a second. It might have been white men blacked; I don't know about that, but they were not white men I saw shooting those two shots.

Q. Where were they when they were fired? We want to know exactly.—A. I could not say exact.

Q. We want your best recollection.—A. There is nothing exact about any of my evidence, I want you to understand that, Major or Colonel; nothing more than the fleeting sight of those things I saw there. The shot was about there, I judge (indicating close to the red letter B on the map). Those two men were not right together; one a little ahead of the other.

Q. How far was that from the sentinel's post or beat?—A. The sentinel, where I saw him in the daytime, was on the sidewalk that runs right alongside of the building here.

Q. How far were those shots from you; those two shots you speak of?—A. Sixty to seventy-five feet.

Q. Were they under the light of the lamp?—A. No, sir; they were a little too far away.

Q. Were they the same men you saw going across here?—A. No, I did not say anything about that. The time I saw those men pass here I don't think I remained at that window more than half a minute before I went to another window, looking for a light from a fire, and after I looked out both these windows I came back and saw these two shots here and saw them go over the wall. I did not leave that window again after I saw the flash light of those two shots before they mounted the wall over further up. It was so dim I could just see the men on top of the wall—the wall was whitewashed—a white wall, and as they went over they showed dimly.

Q. How long did you stay at that west window when you first went there?—A. I don't suppose I stayed there more than half a minute.

Q. Where did you go then?—A. I went to the window here to look for a light up here. (Indicates window toward alley.)

Q. How long did you stay there?—A. Just glanced around and turned back to the window on Elizabeth street.

Q. How long did you stay at this window on the north or alley side of your house when you first went there?—A. Probably quarter of a minute.

Q. How long did you stay at the window on Elizabeth street when you went there?—A. About the same time.

Q. Then where did you go?—A. I turned to this window.

Q. How long did you stay there?—A. Until after they mounted the wall.

Q. How long? I want to know the time.—A. Say half a minute.

Q. Then where did you go?—A. Well, I don't know where I went; I probably looked around from one window to the other for a while looking for a light.

Q. Do you mean for me to understand that after that your recollection of your movements becomes hazy?—A. No, sir; not hazy at all; but the reports of the guns receded up the alley, or that way, and the men were out of my vision; consequently there was no use me looking, because I did not see a shot fired. After these men went over the wall there was not a sound of any kind.

Q. But you don't know what you did after you quit looking from that time?—A. I probably looked from one window to the other and was dazed in regard to the cause of this thing and was mystified—supposed the town might be on fire. I had no apprehension that they were shooting at the town or anything of the kind.

Q. When did you get the impression the soldiers were shooting at the town?—A. The next morning when I got up and went to market.

Q. Was that after you had discussed this with some of your friends in the city?—A. No, sir.

Q. When did you arrive at that conclusion?—A. When I saw the horse that was shot—a dead horse laying right close to the sidewalk—when I went past him to go to market.

Q. Then, because you saw a dead horse in the street as you went to market, you inferred that the soldiers in that garrison had shot up the town?—A. No, sir; I did not know anything about the soldiers. I saw the horse had been shot, and when I got a little further off I saw people who commenced to talk about what had been done. I did not know until after I came back from market, because, being an old man and not going out much, I did not know much that was said.

Q. I understood you to say in your first evidence, the direct testimony, that you saw into B Company barracks—that is, the barracks toward your house; could you see into that barracks?—A. See into it?

Q. Yes, sir.—A. In the nighttime? No, sir. I could see the barracks, of course, but I don't think I could have discerned a man walking in front of the barracks, even on the upper gallery, because the color of the barracks is a dark color and the uniforms the men wore was a dark color, and I don't think I could have seen a man distinctly. I might have seen a form move, but I don't think—no, I did not see a man.

Q. Didn't see any lights at all in the barracks?—A. No, sir; not a light.

Q. Did you hear a bugle call?—A. Yes, sir.

Q. How long was that after the first shot?—A. I could not say how long it was, because the time that I could mention would be only approximate, an estimate, a judgment; I had not no way of telling exactly what time it was nor how long from any one occurrence to another, but I would suppose from the time the first shot was fired until the bugle call, which I was under the impression was assembly, was in the neighborhood of eight or ten minutes.

Q. Did you hear what is known as assembly sounded?—A. No; I heard a bugle call that was different from most any bugle call I am acquainted with. I am not acquainted much with any of them, in fact, but there seemed to be a bugle call that was assembly or what I supposed was assembly call.

Q. How many times did it sound?—A. I only heard it once.

Q. Where was it, with respect to your house?—A. Quite a long distance from my house.

Q. What direction?—A. It was, I should judge, about east.

Q. You know where the guardhouse is there?—A. Yes, sir.

Q. Was it in that direction?—A. Yes, it was.

Q. Then, from the time that first shot was fired, the two shots, until that bugle call, was eight or ten minutes; what happened then?—A. Well, I don't know what happened.

Q. Did you see anything?—A. No, sir.

Q. Where were you?—A. I was in my room upstairs over the telegraph office, where I live.

Q. Had your curiosity ceased at that time?—A. No, I don't say it ceased; but a man of my age is not going to run downstairs naked to see what's going on.

Q. Then you were naked at that time?—A. Certainly, I undressed myself.

Q. But you did go to the window where the light shines in?—A. Yes, sir.

Q. Your nude condition did not stop you from that?—A. No; it was pretty warm weather down there in August, you did not have to put on many clothes to go to the window.

Q. But you don't want me to believe it was on account of your nude condition you lost your interest in this excitement that was going on, as soon as the bugle call sounded?—A. I had no interest in anything that happened after that bugle call sounded, or before it sounded, except fire. I did not know what the people in the garrison were doing; they were all friends of mine and I supposed they were able to take care of themselves.

Q. How long did the firing continue that you heard?—A. The first to the last shot—that's approximate you know—an estimate—I would say ten minutes.

Q. How many shots did you hear altogether?—A. No idea.

Q. Give us your best judgment.—A. Well, if I was a betting man and betting anything, I would bet there was 50; I think I would be on the safe side.

Q. Where were those 50 fired?—A. Most of them fired up street—uptown somewhere.

Q. I think you said there were 4 or 5 fired at first; is that correct? I don't want to misquote you.—A. Yes; there was positively 5 shots fired before the men went over the wall, and there might have been 25.

The court then took a recess for five minutes, and at 4.30 o'clock the members of the court, the accused, his counsels, the reporter, the witness, and the judge-advocate resumed their seats.

Q. Did you tell the Citizens' Committee how many shots were fired?—A. I don't remember.

Q. Did you tell Major Blocksom and Mr. Purdy how many shots were fired?—A. I think I estimated the number of shots fired—in the garrison before they went over the wall—at 30.

Q. How long ago was it you gave that evidence to Mr. Purdy and Major Blocksom?—A. Well, that's probably two or three weeks.

Q. And at that time you thought it was 30?—A. I estimated it at 30 about.

Q. There was 30 fired at that place; where did you hear the next and how many?—A. The next shots were fired were tolerably close to the wall; I would say there was 15 or 20.

Q. Inside or outside the wall?—A. Outside.

Q. In the alley?—A. I don't know where they were.

Q. How long did it take to fire these you have just said were outside the alley, 15 or 20 of them?—A. I don't think it would exceed half a minute.

Q. Did the firing cease then?—A. It was some time before I heard any more shots.

Q. How many did you hear then?—A. I could not tell.

Q. Your best recollection.—A. A dozen may be.

Q. Where were they with respect to the others?—A. Farther up town; away from me.

Q. How long did they last?—A. I don't know; they was not all fired together—a shot now and then.

Q. Approximately, the best recollection.—A. May be half a minute.

Q. Did you hear any others after that?—A. I don't know, after that, exactly what you get at. The shots was not fired—I could not tell any amount of shots fired at any one time, there was firing—little intermission and firing again—and how many intermissions, I don't know.

Q. Give us your best recollection.—A. I would say three or four intermissions.

Q. They were all back of your house and uptown?—A. Yes, sir.

Q. All fired from the same guns?—A. I don't know anything about that.

Q. You didn't note any difference in the report?—A. No, sir.

Q. Any more after you heard those uptown, toward the garrison?—A. No; I think the last two shots I noticed particularly were fired close to the garrison, and I thought maybe the men were coming back or a new party firing.

Q. You heard how many then?—A. I think two only went through my house.

Q. Where were those fired from with respect to your house?—A. Toward the river—southwest.

Q. Could you locate it on the map, your best judgment, as to where it came from?—A. No; I have no idea only by the direction of the hole that passed through the house. That ball might have been defaced, but I thought at the time it was fired from the upper gallery of the lower barracks, and I still think so, but it is only a supposition.

Q. How long was it after the first shot was fired?—A. I don't know; I wouldn't like to say anything about the time the first and last shot was fired, but it seemed quite a little while. I thought at the time it was ten or fifteen minutes from the time the first shot was fired until the last was fired, but a man in the position I was in at the time, being so confused in regard to the cause of this, it might have been much less, but my impression was at that time, and I have no reason to alter it since, that it was from ten to twelve minutes from the time the first shot was fired until the last was fired; it might have been much less; that is only judgment of mine.

Q. Did you tell the Citizens' Committee about that shot that went through your house?—A. I suppose so.

Q. Did you or did you not?—A. I don't know what I told them. I told them what I thought at the time. I don't suppose my three evidences put together would correspond at all, simply because I was misled in the first place of the cause of it, and the result was so much different from what I anticipated and what I thought that I have been under a quandary about the whole thing. I know as far as I am personally concerned, of all the troops that have been there—

there has been nothing but friendship—and no one had any cause for anything else, particularly the soldiers.

Q. We want your best recollection, so this court can make up their minds on the facts; we don't want a confused recollection; we want your best recollection, if you will be kind enough to give it to us.—A. Well, the facts, as far as I am individually concerned, is hardly facts. What I saw and what I heard I know pretty well, but a man with all his faculties, a young man in the prime of life, might form a little different opinion of things than an old man who is hard of hearing and whose eyesight is bad.

Q. How long after you heard these shots up town until you heard this shot that went into your house? What is your best recollection of this time?—A. I have told you that two or three times; I think it is from ten to fifteen minutes.

Q. Do you see that gentleman sitting on the rostrum up there, sir?—A. Yes, sir.

Q. I will ask you to tell me the color of his clothes, if you will—what colors you see in his clothing? What color or colors—all the colors, if more than one?—A. I should suppose he was dressed in blue with yellow trimmings.

Q. Are those the only colors you see?—A. The only ones I can recognize from here.

Q. Do you see anything in his hand?—A. Yes; I see something in his hand.

Q. What color is it?—A. I don't know what color it is—a light color, not dark.

Q. Tell us the color of the chair he was sitting on over there?—A. Yes, sir. It is a wood color—dark wood color; varnished wood.

Q. Stand up and look at the gentlemen in the back of the house—four gentlemen back there. How many gentlemen do you see back there by the stove?—A. I see one man—two men.

Q. Is that all you can see back there?

At this point the judge-advocate addressed the court as follows:

The defense has asked that all witnesses in this case be excluded from the room, and I think one of the men at the back of the room is a witness. I therefore insist that he leave the room, as requested by the defense.

To which counsel replied:

This is not a trick; I simply want to test this man's sight to see if he can see; I want to know, and I want the court to know. I know nothing of the men back there; I did not put them there. I don't want a false impression created. I did ask the associate counsel to get some men in the back part of the room so I could at the proper time have this witness interrogated as to those people. I did not look back and did not know personally who any of the people were. The whole object was to determine whether or not this man could see at this distance accurately, to determine the color. It is material to this case, and I think we have a right to ask that question, and I understood the judge-advocate to object to it, and I request his objection be put in writing so it go in the record. I claim that it is perfectly proper cross-examination.

To which the judge-advocate replied:

No fault whatever was found with the method employed by counsel for the defense to test the sight of the witness. It was simply to remove a witness from the room to whose presence the defense had objected this morning.

By the counsel:

I object to this for this reason: The judge-advocate selected and indicated, or started to indicate, the only man of all others that we were particularly anxious should be in that crowd.

By the judge-advocate:

Which happened to be the only witness.

By the counsel:

Are you sure of that?

By the judge-advocate:

If you had allowed me to call the name I would have been sure of it.

By the counsel:

I did not wish you to call his name, as this witness would then have been sure of who he was. Have you any objection to the question or not?

By the judge-advocate:

I have no objection to the question or answer at this time or any other time, but I do object to that man's presence in the room.

(The man was then requested to and did leave the room.)

Q. Will you tell the court how many people you see back there by that stove?—A. I see five.

Q. Commencing on the right, will you tell us what colors they are dressed in? Your right, sir.—A. Dark color; either blue or black; I can't tell which.

Q. Any other colors he has got on?—A. I don't recognize any other colors. Light-colored vest or shirt.

Q. Has he got his hat on, can you see?—A. I don't think he has his hat on.

Q. Where is it?—A. In his hand, I suppose.

Q. You can see his hat in his hand?—A. I can see something in his hand; I don't know what kind of hat he wears.

Q. He also has on a light vest?—A. Not light, no, but it is a little different shade from his coat; there is nothing light about it.

Q. Do you see his shoes?—A. Yes, sir.

Q. What color are they?—A. Dark color.

Q. Will you look at the next man to him? What kind of clothes has he got on?—A. I can tell he has an overcoat.

Q. That all you can see?—A. That's all I can see distinctly; yes.

Q. What kind of a hat is he wearing?—A. Is not wearing any.

Q. Has he got a hat?—A. I don't see any hat.

Q. Look at the next man. What kind of clothes has he got on?—A. I judge he has on a light blue suit.

Q. What kind of a hat is he wearing?—A. I don't think he has on any hat; I can't see his hat.

Q. You see nothing but a light blue suit?—A. I don't know whether light blue or light gray.

Q. You don't see anything, then, but that one color; is that what I am to understand?—A. That's all I can see.

Q. Is he a white man or black man?—A. I judge he is a white man; he may have colored blood in him; I don't know.

Q. Take the next man to him; how is he dressed?—A. He is dressed in black.

Q. Do you see any other colors?—A. A white shirt.

Q. Do you see anything else about him different, any jewelry?—A. I can see a chain.

Q. How is the next man dressed?—A. I judge he is dressed in a soldier's uniform.

Q. How is he standing?—A. Stands up like a soldier.

Q. Stands at attention, eh?—A. Yes.

The judge-advocate here objected as follows:

I object to that last remark. "Attention" has a peculiar significance to you gentlemen and has none to the witness.

To which the counsel replied:

May it please the court, he claims knowledge of soldiers, and I supposed he understood.

The court then instructed counsel to ask the witness if he understood the military term "Attention."

Q. He requests me to ask you if you understand what is meant by "standing at attention."—A. No; when you put the standing to it I don't know what that means.

Q. What is the color of the man on your left?—A. He is a fair looking white man.

Q. Got any other color besides the soldier clothes?—A. Not that I can see.

Q. What color is the man on the extreme right—your right?—A. He is a white man.

Q. You are sure about that?—A. No; I am not sure of that.

Q. How many men are there? Look closely and tell us; look carefully.—A. I can see five; there may be one hiding behind the stove; I can't tell.

(The counsel then had read portions of witness' direct testimony wherein he stated he recognized the voice of the man who gave the command "Here we go" or "There they go.")

Q. Did you hear that evidence just read?—A. Yes, sir.

Q. Did you tell the Citizens' Committee you thought that was the man when you went before them?—A. No, sir; I don't think I did.

Q. Did you tell the other examining people?—A. Told them I thought his voice was similar, he had a lisp.

Q. When did you make up your mind he was the man?—A. I never made up my mind it was the man.

Q. When did you make up your mind you thought he was the man?—A. At the time, the instant I heard his voice.

Q. Why didn't you tell the committee then?—A. Because I did not think it was necessary.

Q. When did you make up your mind it was wise to tell?—A. When I was asked the question.

Q. Will you show us where the man was, as near as you can recollect?—A. I have no idea where he was; I did not see him—my eyesight—I just heard the command—I judge it was a command.

Q. At what time in that proceeding, from the time you first saw these men crossing back and forth on that walk between the barracks, and the time they jumped over the wall, was it that you heard that command given in this voice you recognized later on; at what period?—A. The time that the voice reached me with the words I

Q. Is your knowledge of the sound of this voice as indistinct and uncertain as your knowledge of the number of shots?—A. Well, my knowledge is this: This man came to me—I think it was on the 5th or 6th of the month; he represented himself to be a sergeant; I didn't ask his name. I had a small house vacant in that alley I was using partly for a storeroom, but it was a dwelling house, and he saw it was not occupied and wanted to rent the house, and told me the reason—said he had a wife coming here and he did not want to take her up in the tenderloin district; wanted her close by. I did not care, for the small rent I could get, about moving my furniture out and I put him off, and that man came to me three days in succession about that house, and then he talked about himself—said he had been in the war in Cuba. He had a peculiar expression, a peculiar way of talking, sort of a lisp; he was a fine looking man about 40 or 45, and when I heard this command "There we go" or "Here we go" it sort of struck me it was the same man made the remark. That's all I know about it; I am not positive one way or the other.

Q. Do you want this court to understand that you heard that same identical voice giving commands that night that you had heard two or three days before?—A. No, sir; I don't want the court to understand anything more than I suggest it is possible—my thought. I don't know there is a man in that garrison that ever went over the wall, as far as I am positively sure. What I saw at that distance is very indistinct.

Q. Is it not a fact that your hearing would be equally indistinct between the point pointed out and your window?—A. Yes; equally so.

Q. You don't mean to swear before this court that the same man gave a command that night 60 or 70 feet away from you that had been talking to you about a room the day before?—A. No, sir; I don't swear he was or was not; it was my impression he was.

Q. When did you formulate that impression?—A. I formed that impression immediately when I heard the voice.

Q. Why didn't you tell that Citizens' Committee you had such an impression?—A. Because I did not think it was necessary; they did not ask me anything about it. In fact, everything I have said before the Citizens' Committee or any other committee, if anything, has been on the side of the soldiers.

Q. I believe you said that wall was painted white or whitewashed?—A. Yes, sir; it is called whitewash; it is sort of a blue whitewash, actually; a little blue put in it.

Q. Was it white or blue?—A. Nearly white.

Q. Was it white or blue?—A. It was nearly white.

Q. Now, this man who asked you about the rent of the house and had that strange lisp saw you several times?—A. Yes, sir.

Q. How many times?—A. All together four times, I think.

Q. Did you talk to him a good deal, more or less, each time?—A. No, not much; he done most of the talking.

Q. Could you recognize him if you saw him here now?—A. I don't know whether I could or not; I think I could if I saw him in his uniform and he wore the same clothes he did then.

Q. You identify him, then, by his clothes and not his conversation?—A. No; but there is a difference in the way a man dresses. You put citizen clothes on you and I might not know you. I would recognize him if he would speak to me, I can tell you that.

Q. This lisp that is so well fixed in your mind—did he lisp with each word he uttered that night?—A. Well, there was only three or four words, "There they go" or "Here we go," and the sounds. I don't know if it was each word or not. There was a queer way about it that made me think I identified the man, that's all.

Q. Was this matter ever discussed by you with any citizens of Brownsville since August last—this identification of the man with the lisp?—A. No, sir.

Q. You are sure about that?—A. Yes, sir.

Q. You are sure it never came up in these numerous discussions that "we" had?—A. I don't remember it; no.

Q. Are you sure it did not?—A. I am not sure; no.

Q. You might have discussed it?—A. Well, I might, but I don't think I did.

Q. You won't say positively you did not?—A. No.

Q. You still can't remember any of those people that you describe as "we" in these interviews—any one?—A. It is owing to what you call interviews. I don't suppose there is 20 men in Brownsville but what has talked over that occurrence among themselves since it happened, or probably 20 women either.

Q. Pretty generally discussed, was it?—A. Well, I should say it was.

Q. Did you tell any of them what you knew?—A. I might have done so.

Q. Could you remember whether you told any particular one? Could you tell us who you talked to?—A. No; I could not.

Q. You could not remember a single soul you ever discussed it with?—A. No, I can't. Somebody might have talked this thing over and I put in a word, and somebody else said something a hundred times since then. I know I never went to any individual and told them what I thought about it. In fact, I believe I never told it to my wife what I actually thought about it.

Q. Did any of your neighbors come to your house and discuss it with you?—A. No, sir.

Q. Where were these various discussions held?—A. They might have been held in the barber shop, or in the apothecary shop, or in the blacksmith shop, or 40,000 other places.

Q. Were they?—A. Of course it was.

Q. Whose barber shop did you discuss it in?—A. Never discussed it in anybody's barber shop. I said it might have been.

Q. Were they discussed in any of those places you have mentioned?—A. I could not say where they were discussed or by whom; I know it has been general conversation.

REDIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Mr. Rendall, the shot that went through your house passed through your house before the men went over the wall?—A. No, sir.

Q. After?—A. Yes, sir.

Q. Mr. Rendall, what time is it now, at the present moment?—A. You want me to look at my watch?

Q. If you please.—A. By my watch it is 16 minutes to 6.

Q. Are there any lights burning in this room?—A. No, sir; I don't think there is. You mean artificial lights?

Q. Yes.—A. No, sir.

Q. How far is it to the end of the room down there?—A. About 45 feet, I judge.

Q. Would you call this room unusually well lighted at the present time?—A. No, sir; I would not.

Q. Mr. Rendall, will you take a look at the color of this ceiling? Now, will you compare that with the color of the garrison wall around Fort Brown; is it similar or very dissimilar?—A. I would not call it—the garrison wall was painted with a blue powder into the whitewash—that the first month, maybe, or a week after it was painted, it was a blue cast; but that bluish faded out by degrees, until the time we speak of it was nearly white—that is, a dirty white.

Q. You spoke of a small toilet room, if I remember you correctly, near the middle of B Company barracks; did the men who went over the wall go over on the side toward your house or on the side beyond?—A. Yes; that I saw went over on this side of the closet.

Q. Namely, on the side toward your house?—A. Yes, sir; a little this side the entrance to the alley, those I saw.

Q. How long an interval was there between the time you saw those men pass under the light, whom you declare to be soldiers, and the time you saw other men, or perhaps the same men, go over the wall?—A. I don't think it was thirty seconds.

Q. And the men under the light had guns?—A. Those that I saw, two guns.

Q. And the men that jumped over the wall did not, as far as you know?—A. I could not tell; that was too far.

Q. It is probably the fact that these soldiers were chasing a lot of marauding people out of the reservation?—A. I thought they were chasing thieves; I could not tell.

Q. How long did it take the soldiers to rouse and come from the barracks after this crowd had jumped over the wall?—A. I could not say.

Q. Do you know at what moment the soldiers did come out of the barracks? Did you either see or hear them?—A. No, sir. I heard the men come downstairs, on the upper galleries, and come downstairs after the last firing. I think a commissioned officer was calling the roll or bugle call, or something like; but it was some time after the last firing.

RECROSS-EXAMINATION.

QUESTION BY THE ACCUSED.

Q. What was the condition of the weather that night?—A. The condition was rather a dark, starlight night; but very little wind, as far as I remember.

EXAMINATION BY THE COURT.

Q. You say that you went to sleep about half an hour after the time when you first heard the firing and after a command had marched down the street; what must have been the time, then, after the first firing before the command passed down the street?—A. Well, I judge about thirty minutes.

(Witness being unable to clearly understand the map, and there being no objection, the judge-advocate indicated the corner of Elizabeth and Fifteenth streets, and she said that was where her residence was located.)

Q. Mrs. Rendall, will you tell me what this is (handing witness a photograph)?—A. The telegraph office.

Q. What is the telegraph office?—A. My residence; at least, the upper part of it.

Q. Do you recognize that as such?—A. Yes, sir.

(The judge-advocate submitted in evidence the photograph mentioned, which is hereto appended and marked —.)

Q. Will you look at this and tell me what you think it is (handing witness another photograph)?—A. That is the gate going into the post, the walk, directly——

Q. From what point is that taken?—A. From our front window, looking into the post.

Q. What is that place (handing witness another photograph)?—A. That is the large gate, I think.

Q. From what point, apparently, is that taken?—A. Probably from the same window, of course, there is a view; this is the large gate and this, I presume, the smaller gate.

Q. What are those buildings behind there, do you know; behind that wall?—A. Those are the barracks, are they not? The barracks, the quarters.

(Last two pictures identified by witness are hereto appended and marked, respectively, ———.)

Q. Will you tell the court where you were upon the night of August 13, 1906?—A. I was in bed, awake.

Q. Where?—A. In my bedroom over the telegraph office.

Q. In the town of Brownsville?—A. Yes.

Q. Did anything unusual occur during this night, and if so, please state fully to the court what.—A. Yes; I heard a single shot.

Q. About what time?—A. I went to bed about twenty minutes or twenty-five minutes after 11. I sat up reading and looked at the watch about that time, and had not been asleep.

Q. You say you heard a single shot?—A. Yes, and then I think two or three others in succession.

Q. What did you do then?—A. I sprang up immediately on hearing the first shot and went to the window.

Q. Which window?—A. The front window, looking into the post.

Q. Did you see anything?—A. Not then; for a few moments I didn't.

Q. When did you see anything?—A. Well, it was after several shots had been fired.

Q. And what did you see?—A. I heard a confused sound of men talking, low voices, and seemingly moving backward and forward in front of the quarters nearer the river.

Q. Could you see these men?—A. Not at that time.

Q. Did you subsequently see men whom you thought were the same ones?—A. I saw men passing along the walk toward—I suppose it would be the eastern part geographically.

Q. Away from the river?—A. Yes.

Q. What kind of men were they?—A. I could not see, but I supposed they were soldiers, or men in the post.

Q. What made you suppose that?—A. I did not suppose anyone else would be in the post excepting the men.

Q. Did you see anything about them which would lead you to believe they were soldiers?—A. No; I could tell they were men moving along rapidly.

Q. Did these men at that time pass close enough to the light for you to distinguish them?—A. No. I could see their forms distinctly.

Q. Could you tell whether or not these men were white or colored?—A. No, I could not, but I presume they were colored.

Q. Was there anything said by these men that you heard?—A. I heard a remark made, but I am not sure whether it was during the time I heard them moving rapidly backwards and forwards there, or afterwards.

Q. Do you remember what this remark was?—A. It was something, either "I told him to shoot," or "I told him not to shoot."

Q. What was the quality of this voice; was it peculiar in any way?—A. No, I don't remember that it was.

Q. Did you see what became of these men?—A. No, I did not, because I was moving from one window to the other; I did not remain only a few moments at either of the three windows, but kept looking from one to the other.

Q. Why did you look from one window to the other?—A. I wanted to ascertain what the firing and trouble was.

Q. About how many shots were fired? I think you mentioned you heard shots.—A. I heard a number. When do you mean, at the beginning of the firing, or all through?

Q. Kindly tell the court how many shots you heard at the beginning and how many at any subsequent time.—A. I heard first the single shot, and then I heard a few, 3 or 4 perhaps, in rapid succession, and then, I think, a bugle call.

Q. Do you remember whether the subsequent shots were in any wise different in sound or tone from this first single shot you heard?—A. Perhaps they may have sounded louder and more distinct.

Q. How long did the bugle call sound after the first shot was fired?—A. I think it was a short call.

Q. How long a time was it after the first shots were fired?—A. I think it was almost directly after it, as well as I remember.

Q. Was your house injured in any manner that night?—A. Yes.

Q. In what way, please?—A. It was struck by a bullet. I was standing at the window, my husband and I, at the window looking onto Elizabeth street, stooping, looking through the window, and suddenly my face and neck was covered with dust and splinters; I did not know the shot had entered the room; I thought it had struck the outside of the house, for I distinctly smelled the odor of the pine.

Q. Did you at any subsequent time examine the house for bullet marks?—A. I said then, "We had better come away from the window," but I did not know until the next morning that the bullet had entered the wall, had gone through the house.

Q. The next morning did you examine those holes to see whether you could tell from their alignment from what point they were fired?—A. No, I don't think it occurred to me at the time, but I might possibly have thought it came from the first quarters near the river.

Q. You never discussed it with anyone in your house?—A. Why, not especially; I may have possibly spoken of it and talked of it.

Q. Did you talk over it at all, especially or otherwise?—A. I presume I did; I can not recall.

Q. How often?—A. The number of visitors or how often—probably a good many times. It was a common subject of conversation.

Q. It was a common subject of conversation?—A. The occurrence; certainly.

Q. Did you ever tell anybody what you saw that night, except Mr. Purdy and Major Blocksom?—A. Yes; I probably did.

Q. Did anybody ever tell you what they saw or heard?—A. No, I don't think that they did.

Q. Nobody in the place?—A. No, sir.

Q. Not even your husband?—A. Well, I suppose we saw almost the same things, or might have seen them, if he had been looking from the same window.

Q. Do you want this court to understand that you never discussed the details of this with your husband?—A. We spoke of it; but I don't think we entered into any special details.

Q. Did you tell him what you saw at any time?—A. Yes.

Q. Did you tell him what you heard?—A. Yes.

Q. How many times did you tell him?—A. Probably not more than once.

Q. When was that?—A. I can not recall the time, it might have been the day after or a few days after.

Q. Might it have been more than once; might you have told your husband more than once what you saw that night?—A. No; I hardly think so.

Q. Or heard that night?—A. I do not remember; I may have spoken of it more than once, but I don't remember especially.

Q. Did he ever tell you what he saw or heard?—A. I don't think he spoke of it more than once or twice.

Q. Did he tell you the whole story of what he saw and heard?—A. Yes; I suppose not connectedly, but he may have spoken of different incidents of what he saw.

Q. As a matter of fact, didn't you discuss that pretty freely with your husband?—A. I did not, because he is not a talking man.

Q. Did you with anybody?—A. As I said before, I may have.

Q. Did you or did you not? We want to know.—A. I did speak of it to different people.

Q. How many times?—A. I do not remember.

Q. Did you tell them the whole story?—A. Possibly.

Q. Give us an idea of how many times you have told this to other people.—A. I don't think I can.

Q. Would you say as many as ten times?—A. Hardly.

Q. Well, five?—A. I will not undertake to say the number of times, for I do not remember.

Q. Will you tell any one person you have talked it over with?—A. I can't recall any special person I have talked with.

Q. As a matter of fact, was not this talked of pretty freely in the city of Brownsville as an outrage?—A. It was.

Q. And you joined in these conversations?—A. I certainly did.

Q. And this was so commonly discussed that it made no impression on you who you talked to?—A. No; I can't say that.

Q. You never discussed it with anyone in your house?—A. Why, not especially; I may have possibly spoken of it and talked of it.

Q. Did you talk over it at all, especially or otherwise?—A. I presume I did; I can not recall.

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Q. And you joined in these conversations?—A. I certainly did.

Q. And this was so commonly discussed that it made no impression on you who you talked to?—A. No; I can't say that.

Q. Will you tell us exactly what the situation us [was] in regard to that, please, because we want to know? Anybody ever tell you not. to admit this in court?—A. No one ever did.

Q. Will you think the matter over and give us the benefit of your best recollection now as to who you ever discussed this with freely and how often?—A. No, sir; I will not, because I don't think I could give you a correct answer.

Q. Why not?—A. Because I may have spoken about it to a number of people casually; I don't remember.

Q. As a matter of fact, Mrs. Rendall, is this the class of subject you would discuss casually? Is it not a subject you would discuss with a great deal of feeling, naturally?—A. Yes.

Q. Didn't you discuss it with a great deal of feeling with a number of people?—A. Yes.

Q. If you did discuss it, tell me why you can't remember one single person in Brownsville you discussed it with?—A. I could give the names, certainly, of some of my friends I discussed it with.

Q. When you were calling, or when?—A. When I was calling, yes, and when they were calling.

Q. When you were calling and when they were calling on you. So it might have been discussed in your own house with your friends?—A. It might have been, but very few times, because some weeks the calling was limited.

Q. Why?—A. I presume the people were disturbed and uneasy about—the outrage, I presume, you would call it.

Q. You mean to say they were afraid to get together; is that the impression you want to give?—A. Not that exactly, but they just did not go out; didn't call upon me very often.

Counsel for the accused addressed the court as follows:

In order that the record may be straight, if I may be pardoned, I will make somewhat of an explanation of these pictures. I understand they are the same that appear in the report of Mr. Purdy, and the defense has just explained to the judge-advocate that there is no objection to the printed matter underneath the pictures being examined in connection with the pictures; they indicate to the court the points from which the various pictures were taken. For instance, the picture showing the front gate and the small gate was taken from the front of the Western Union office, showing the main gate and garrison wall looking southeast. The house known as the Western Union building was taken from in front of the garrison wall, evidently in what is described as Fifteenth street. The next picture shows the small gate and the road inside of the garrison with the ends of two sets of quarters, that we take it, are quarters on the officers row in the rear. This was taken from Mrs. Rendall's room in the Western Union building looking toward the garrison. It shows the small gate, as I said, and the sidewalk and the road. We simply wish to call attention in that connection to the fact that on account of tricks of photography that distance looks about 200 yards, when as a matter of fact, as I understand it, the distance from the wall to the barracks is only about 60 feet.

Q. When did they commence to call on you, Mrs. Rendall; how long after August 13?—A. Probably friends came in, probably two or three weeks or a week after the white soldiers came there. I don't remember that exactly.

Q. Where were you exactly when you heard that first shot?—A. The first shot that was fired?

Q. Yes.—A. I was lying in bed awake, I had not been asleep at all.

Q. What were you doing?—A. I was simply lying down.

Q. Not doing anything?—A. Simply awake, that's all I can say.

Q. What had you been doing that evening, Mrs. Rendall, up to the time you laid down?—A. I had been reading.

Q. What were you reading?—A. I can't remember, probably a magazine or a novel; I don't remember.

Q. When did you quit that?—A. I think probably 20 or 25 minutes after 11.

Q. Whereabouts were you lying down, what part of your house?—A. The bed stood immediately at the side of the window where the shot came through, against the wall.

(Counsel goes to map on wall and explains to witness what each mark represents; shows her the streets, the houses, etc.)

Q. Now, which room did you sleep in in your house? First tell us how many rooms are in your house?—A. There are two rooms and the hall running across.

Q. Where were you, in the room toward the garrison?—A. Yes.

Q. Does that room run from front to back toward Washington street? The full depth of the house from Elizabeth street to Washington street?

(Witness here indicates that the door in the center of the picture is the door into the telegraph office and that the entrance to her own apartments is on the side of the house toward the city of Brownsville and farthest from the garrison.)

Q. Will you tell us how you got into your bedroom from downstairs?—A. There is a hall downstairs with a staircase leading to the upper hall.

Q. Straight up?—A. Yes.

Q. How do you turn when you get to the top of the stairs to get to your room which is on the farther side of the house from the stairway?—A. Turn to the right.

Q. Do you go the whole length of the house toward the garrison to get into your room?—A. Yes.

Q. There is a hall there the whole length?—A. Yes, sir; and a small hall cutting off the staircase.

Q. How many rooms on the front?—A. Two rooms only on the front.

Q. Are there any rooms in the back of the house?—A. Yes; there are a bathroom and another small room or pantry.

Q. Where is that small room or pantry you speak of?—A. It is just back of the staircase coming up into the hall.

Q. What windows have you in this room that you were in toward the garrison?—A. There are three windows in the room, one looking directly into the post, the end window, and one on the side, which also gives a view of it; I suppose you call it the end of the room looking onto the side wall. (Indicates toward the garrison.)

Q. One on the front, one on the side toward the garrison, and the other looking onto Elizabeth street from the other end. Does not your house front on Elizabeth street?—A. Yes.

Q. You have one window on Elizabeth street in your room?—A. Yes; that is the bedroom.

Q. That then is the one on the front or Elizabeth street side? Where are the other two? Is there more than one window on the Elizabeth street side?—A. No; only one.

Q. Now, where are the other two windows in that room?—A. One on the end looking toward the post, and the other is across on the other side on the——

Q. Looking which way?—A. Looking directly toward the wall or the quarters.

Q. I understood you to say there was one window on Elizabeth street and one here, which looks toward the wall, and where would the other one be, looking, as you say, toward the wall—on what side?

(Witness here indicates that she was in the room of the house toward the garrison upstairs. That there is a window on Elizabeth street and one facing directly toward Fifteenth street or the road separating the garrison from the city of Brownsville, and one looking toward Washington street or the alley between Elizabeth street and Washington street, looking over what is known as the shed.)

A. The streets, as far as I am concerned, I only know one or two streets in the town by their names, and I presume this side window looks into Elizabeth street. That would be Elizabeth street looking directly into the post, is it not?

Q. You were in bed when the first shot was fired?—A. Yes, sir.

Q. What did you do?—A. I sprang up immediately.

Q. Went where?—A. To this window.

Q. Which one, show us on the map.

At this point the court was closed, and the accused, his counsels, the witness, the reporter, and the judge-advocates withdrew, and when the court was opened the president announced, in their presence, as follows:

I am instructed by the court to request the judge-advocate and the counsel for the defense to prepare any diagrams or other matter that they might think would facilitate the examination of witnesses, prior to the interrogation of the witnesses for evidence before the court, with a view of facilitating the examination of the witnesses.

Counsel for accused here addressed the court as follows:

The defense is very glad indeed to cooperate in that to their utmost.

The court then took a recess until 2 o'clock p. m., at which hour the members of the court, the accused, his counsels, the reporter, the witness, and the judge-advocates resumed their seats.

Q. Mrs. Rendall, this is a plat of your house, which shows the position of the rooms in the upper floor. (Counsel thoroughly explains plat to witness.)

Counsel then addressed the court as follows:

Under the instructions of the court of this morning, the judge-advocate had prepared, and the defense is willing to accept, a rough plan or plat of the upstairs of what is known as the Western Union Telegraph office, or the rooms occupied by Mr. and Mrs. Rendall at the time of the occurrence of August 13, last, and, before proceeding further, I would like to have the court examine this so that they will understand exactly what is meant by the several questions. I would like to state further to the court that the entrance to that house, as stated positively in evidence this morning, is on the side further away from the garrison and that the entrance to the lower part of the house is in the center of the building on Elizabeth street, therefore the plat shows conclusively exactly where Elizabeth street is.

(Each member of the court examined the plat, which is hereto appended and marked —.)

The court then requested that the points of the compass be indicated on the plat in the same manner as on the map, also that the track of the bullet be indicated as well, that is as near as can be, the entrance and the exit.

Counsel here addressed the court as follows:

I shall have to object to that, unless it is given as evidence. I don't think it either fair or right that the judge-advocate or the defense should indicate any such thing. I am perfectly willing the judge-advocate or the court shall indicate that as evidence, but I don't think it fair unless it is brought out as evidence.

The above request was then withdrawn by the member of the court.

Q. Mrs. Rendall, was there a light in your room at the time the firing occurred?—A. There was not.

Q. When had it been put out?—A. When I retired about twenty or twenty-five minutes after 11.

Q. I think you said in your evidence this morning that you, at the first shot, jumped out of bed and went immediately to the window.—A. Yes, sir.

Q. Will you tell the court which window you went to?—A. To the end window, looking into the post. The small gate is opposite the window.

Q. Can you show us on the plat, Mrs. Rendall, which window you mean? If that will confuse you, can you tell us which street you were looking over?—A. I suppose it would be Fifteenth street, wouldn't it?

Q. The one that runs by the gable end of your house is Fifteenth street.—A. That is the window; I call it the end window because it is the gable. (Witness indicated on map window looking over Fifteenth street, or in the gable end of the house.)

Q. Did your husband go to the same window?—A. After a moment or two; he didn't get up immediately when I did, but almost directly afterwards.

Q. Were you both looking out the same window then?—A. Yes; but not all the time.

Q. How long was it after you got to the window there until you heard the next shots you mentioned?—A. They came almost immediately.

Q. After you reached the window?—A. Yes.

Q. About how many did you say occurred at that time, as you recall it?—A. The first, single shot, then I think there were perhaps 3 or 4; I can't be positive, but I think about that many.

Q. And up to that point you had not seen anybody moving at all?—A. No; I had not, because, as I told you, I thought it was a fire alarm.

Q. There was an interval after these 3 or 4 shots, or whatever the second bunch of shots was?—A. A very short interval, and I think then the bugle call.

Q. Then there were more shots?—A. There were more shots.

Q. About how many, as you recall?—A. Oh, a number.

Q. Could you give us any idea at all of about how many?—A. No, I can't; a number in succession.

Q. Could you tell us about where those shots were?—A. They sounded to me in the post somewhere—about the wall, or perhaps beyond the quarters.

Q. On the other side of the quarters from you?—A. Yes.

Q. Did they sound very distinctly?—A. Very.

Q. You think they might have been on the parade side of the quarters, do I understand you?—A. They might possibly have been.

Q. Were you still standing at that same window all this time?—A. No, sir; I moved around to the different windows.

Q. Can you remember how long you did stay at that window—the one you first went to?—A. Perhaps a minute or two.

Q. And then which one did you go to?—A. To the one looking over the shed.

Q. Did you see anything out of that window?—A. No.

Q. The bugle call had gone before you went to that window, as I understand?—A. I think so.

Q. Do you remember how long you stayed at that window?—A. Just a moment or two.

Q. Could you see the wall from that window?—A. Distinctly.

Q. Did you see any men from that window?—A. No, sir; not then.

Q. Now, what window did you see the men from?—A. From the front window, running along the wall.

Q. The one that looks over Fifteenth street?—A. The end window.

Q. About how far from the wall were those men at that time?

At this point the court took a recess until 2.40 o'clock p. m., at which hour the members of the court, the accused, his counsels, the reporter, the witness, and the judge-advocates resumed their seats.

Q. About how far were these men from the wall at that time, or when you said they were running along the wall?—A. Just a short distance; I don't mean by running along the wall that they were on top of the wall, but inside.

Q. Were they closer to the wall or the barracks?—A. They were, I think, a little nearer the wall than the barracks.

Q. Was it at this time—that is, when you came back from the window looking over the shed to the window looking over Fifteenth street, that you saw men or forms moving along?—A. Yes; indistinctly.

Q. That was then, as I compute it, four or five minutes after the first shot. As I understood, you said you were about two minutes at this window when you first went to it, and if I mistake not, about two minutes looking over the shed.—A. Hardly as long as that, about a minute.

Q. Three or four minutes after the first shot then was when you saw these indistinct forms; is that correct?—A. Perhaps so; I would not be positive as to the time or length of time.

Q. I wish very much that you could show, with Captain Murphy there, on the wall—show the court, as near as you can, about where they were running. We are particularly anxious to know with respect to the main gate that goes through, or with respect to the end of the barracks. (Counsel explained to witness position on the map of the gate and the wall.) Where were these men with reference to this gate?—A. They were on the left of the small gate going out toward the alley. They were on the other side of the small gate going up toward the alley where they went out.

Q. The other side of the big gate?—A. Yes.

Q. Was there a light or lights on the big gate at that time?—A. Two lights, one on each end, and one over the small gate.

Q. How far up did the shadow of that light extend—that is, the brilliancy from it?—A. I think perhaps 6 or 8 feet.

Q. They were beyond the shadow of the light, were they—the forms when you saw them?—A. Yes; just running along; I could indistinctly see them; it was not a dark night.

Q. What kind of a night was it?—A. A starlight night.

Q. How dark?—A. Quite bright. Without having any light I saw distinctly.

Q. Do you remember that small house, Mrs. Rendall (indicating on map the small toilet)?—A. Yes.

Q. Were they closer to that or closer to the gate when you saw them?—A. They were closer to the gate.

Q. And they were back from the wall a little bit toward the barracks, were they not?—A. Yes.

Q. About how far away were they from you? Could you give us an idea in this room, for instance?—A. No, I could not; not correctly.

Q. As we understand it is 30 feet across that street—30 to 36 feet—and they were up from that. With that information, could you give us some idea?—A. I think they were just possibly—if they were nearer the building they would be nearly opposite the second quarters.

Q. The center of the second quarters?—A. Just about; yes; as well as I can——

Q. That's when you first saw them?—A. Yes.

Q. And they were running at that time?—A. They were going along quickly.

Q. Was that where you heard the voice you spoke of this morning, "I told him not to shoot," or "I told him to shoot," or something like that?—A. No; that was down in the quarters nearer the river.

Q. They were down there?—A. There seemed to be a number of men moving about rapidly and speaking in low voices.

Q. He is now pointing at the quarters down there. Can you give us an idea, with respect to that barracks or quarters, where they were—at one end or the middle?—A. They seemed to be about in the front, about the middle, close to the wall.

Q. And at that time you were looking out of that window there on Fifteenth street?—A. Yes; when I heard this.

Q. When you saw them moving about?—A. I did not see them, but I heard them.

Q. That's where you located the noise?—A. Yes.

Q. Were they the same men you saw up at the farther place where you saw the forms?—A. I could not say.

Q. Then you did not see these men pass from the lower quarters up to the upper place?—A. No; I saw them just a glimpse from the window; as I say, I was going rapidly from one window to the other and each window commands a view of the post.

Q. Could you give us any idea how far from the gate and toward the parade ground, or quarters, that light would help you to recognize people, as you recollect it?—A. If it was the first quarters I could possibly see at least half way, or almost half way, across.

Q. You didn't see these men except that once when they were up about midway of these quarters there?—A. No; that's the only——

Q. Could you distinguish whether they had on clothing or not, as a matter of fact?—A. They were rather dark-looking objects; of course, I could not say.

Q. You could not tell the color of the clothing?—A. No.

Q. You could not see a gun?—A. No.

Q. It was too indistinct to make out whether they were black men or white men, I understood you to say this morning.—A. Yes.

Q. Where was the next place you located firing, Mrs. Rendall?—A. I can't say as to that; the firing was remarkably clear and distinct. It seemed very near.

Q. In regard to your house, was it toward town or toward the barracks, or how?—A. It was in the barracks somewhere.

Q. About how many shots did you hear then?—A. Oh, a number.

Q. I am talking now about after the first shot that woke you up, and then a bunch of shots—four or five—and then quite a number; that makes three bunches you have testified to. The shooting I want to get at is after the three bunches of shots were fired.—A. I think after that was the shot that came through the house.

Q. Where did that come from?—A. From the barracks or the wall.

Q. Will you tell the court from what direction that came; can you show us on the plat there?—A. I can probably show where I thought it came from, which would be from the last quarters toward the river.

Q. This was at least how long after the first shot was fired until that shot came through your house?—A. I think, as well as I remember, it was just before the last terrific volley.

Q. And where was that last terrific volley?—A. I can't tell that; possibly in town.

Q. Was it in the town or in the post?—A. I think in the town.

Q. Where, with respect to your house?—A. Very near.

Q. Was it down toward the hotel or was it back of your house toward Washington street?—A. I could not locate it; I would not like to say.

Q. About how long, Mrs. Rendall, after the three bunches of shots—that is, the 1 shot and then 3 or 4 or 5 and then the next bunch—that you heard this terrific volley?—A. No; I think that must have been practically the end of the firing.

Q. From the first to the last of the firing how long was it?—A. It might have been eight or ten minutes.

Q. That would be your best recollection now?—A. I think so.

Q. Did you hear anything else there in the barracks during this time? You said you heard one bugle call; did you hear any more than the one?—A. Yes; I think there were one or two.

Q. What happened after that in the barracks, that you heard or saw, aside from the shooting and the running of forms?—A. The only thing I heard was the calling of the roll call.

Q. Where did that occur?—A. I think near the big gate, just inside.

Q. Can you show us there?—A. There's the gate.

Q. Was it toward the river? Down toward the river?—A. Yes; toward the river.

Q. Were they close to that road that goes through the big gate; was the roll call close to that?—A. I could not tell the exact spot, but I think it was. I think it was near the gate or near the wall, the opening.

Q. Did you look out to see that?—A. I was standing by the window and listened.

Q. Which window were you at?—A. The end window.

Q. The same one?—A. Yes.

Q. Had you been at the Elizabeth street window during any of this time?—A. Yes; I was standing there when the shot came into the house.

Q. Was that before or after that roll call?—A. It was I think before.

Q. How long before?—A. Not long.

Q. How long before that was the terrific volley you speak of—that is, downtown?—A. I don't know; I am slightly mixed; you will have to repeat that question again.

Q. As I recall, you testified first that there was a single shot and then there were four or five and then there was a bunch of shots—quite a number you could not determine—and then you said [there]was a terrific volley down town.—A. To the best of my recollection this volley came after the shot that was fired into the house; I wont be positive, but I think it was. I was terribly frightened and I began to rest myself; I did not succeed very well.

Q. That shot that struck the house; could you locate it with respect to the second or third bunch?—A. I think the volley was just after the shot; I think that was about the last. I think that was the only one I remember distinctly.

Q. At the time the shot struck your house was there a volley, or just one shot?—A. I don't remember that.

Q. And you can't remember the time, with reference to the roll call, when that occurred?—A. To the best of my recollection I think the firing had ceased, because had the firing been going on I don't think I could have heard the names of the men and have heard their answers.

Q. You still don't satisfy me; I may not catch what you intend, still you don't satisfy me as to exactly when that shot went into your house, with respect to either the roll call or the bunch of shots. You think the roll call was right after that bunch of shots?—A. I think to the best of my knowledge the volley came after the shot entered the——of course, I was standing at the window—the shot struck the house; I did not know it entered in; I thought it struck the outside and I said "Let's get away from here," and stepped back into the room, and after that came this terrific volley. That I think I am positive of.

Q. Let's go back to your movements and see if we can fix that shot with respect to that. You went for a couple of minutes to the window looking over Fifteenth street and then you went for a minute to the window looking over the shed and then you came back to the window looking over Fifteenth street, as I understand. Do you remember how long you stayed there that second time, approximately?—A. Probably a few seconds.

Q. Then where did you go, Mrs. Rendall?—A. Do you mean my movements after the last time?

Q. I am talking about your movements irrespective of anything else, you understand; as I stated you went for about two minutes to the window over Fifteenth street, then to the window looking over the

shed, and then you came back for a few seconds to the window over Fifteenth street. Then where did you go?—A. Probably to one of the other windows. I was moving rapidly from one window to another.

Q. It was while looking out the Fifteenth street window that you saw those forms by the outside back of the quarters, when you came back the second time?—A. Yes.

Q. How long did you stay at that Elizabeth street window when you went there the first time?—A. You mean the window where the bullet came?

Q. Yes.—A. After the shot came in?

Q. I am not talking with reference to the shot. The first time you went there.—A. Before the shot?

Q. Yes.—A. Perhaps a minute or two.

Q. Then where did you go?—A. After the shot came in I went to the center of the room.

Q. Was it during that minute or two that the shot came in?—A. Yes, sir.

Q. Were you looking out of that window when the roll was being called?—A. No, sir.

Q. Out of the window over Fifteenth street?—A. Yes.

Q. Am I correct in my recollection of what you stated that it was about ten minutes from the time the first shot was fired until the time the shot went through your house?—A. I can't approximate the time; it may have been three or four or five minutes, perhaps ten minutes, but I don't think it was quite as much as that.

Q. Don't think it was as much as ten?—A. No, sir.

Q. Did you watch them while they were making that roll call?—A. Yes; I was listening; I sat by the window and listened to them.

Q. Which window, the Fifteenth street window?—A. Yes, sir.

Q. Tell the court just what you saw, Mrs. Rendall, during that roll call; what struck you? What you remember of what occurred there.—A. My impression when they called the roll—I know, of course, what a roll call is—but I thought they were putting a guard around when they called out the names of the men and they answered "Here." I could hear; I did not see them.

Q. Could you see them?—A. I don't think I did; I simply sat close to the window and listened to the names and answers.

Q. How far away from the light of the gate would you say that part of the line was which was closest to you?—A. Do you mean outside of the wall?

Q. Were they outside of the wall?—A. You mean from me?

Q. No; what I am trying to get at is your conception or recollection of the distance from the closest light on the gate to the company, or the closest part of the company to that light.—A. I don't think I could tell that.

Q. Were they in the shadow of the light?—A. I suppose they were; I could not see.

Q. Do you know?—A. I could not see them, but I heard them distinctly.

Q. Did you see any light there at that time?—A. Do you mean in the post? I can't say exactly at that time, but I saw during the time, a negro walking around with a lantern, and also an officer, I think, with him.

Q. You don't think it was at that time?—A. I think it was after that.

Q. Do you remember where he was when you saw him—the negro with the light?—A. I think he was just across the walk; across to the lower quarters. I am not certain about that.

Q. About how long did it take to call that roll, as you recollect?—A. A very short time.

Q. Can you put it into minutes or seconds?—A. I have no idea what the length of a minute would be, but my best recollection—I don't think there were more than 12 or 15 men answered.

Q. Are you willing to swear there were no more than 15 men?—A. No; I would not swear it.

Q. On what do you base your statement, then, if you could not see the men, that there were only 12 or 15 men?—A. From hearing the names and the answers.

Q. Is your recollection of the number of men and their answers as acute as your recollection of the other evidence you have testified to?—A. I think so.

Q. You are quite positive, then, that your recollection is more acute as to the number of men who were there than to some other things you have testified to?—A. Yes; but I didn't think all the names were answered to.

(Last question was repeated to witness.)

A. I did not understand it that way, as to the number of men. I am more positive as to the call of the roll than the number of men; that is, hearing the names called out and the men answering.

Q. I understood you to say you were quite positive there were only 10 or 12 men answered their names, "Here."—A. I don't think I said positively; I think I said I thought about that amount. I meant to say that.

Q. Did you hear any names called that there was not the usual response of "Here?"—A. I think so; a few.

Q. About how many?—A. I could not say positively; perhaps 4 or 5, or perhaps less.

Q. Then you think, as I understand you, there were about 10 or 12 men there and that you found some 4 or 5 failures to respond "Here" when their names were called?—A. To the best of my belief it is.

Q. And your recollection is reasonably accurate on that point?—A. I think so.

Q. Please tell us what you understand by horizontal.—A. Horizontal would be—I don't think I quite can describe it. Elevated would be up, I suppose you would say; horizontal would be like that, I suppose, would it not (holding arm straight out in front of her)?

Q. You testified before the committee consisting of Major Blocksom and Mr. Purdy?—A. Yes.

Q. Do you remember what you told them you were doing when the firing commenced?—A. I think I told them I was lying awake, as I——

Counsel for accused here requested that the direct examination of this witness be read over, which was done.

REDIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Mrs. Rendall, after this affray or occurrence, or whatever you choose to call it, on the night of August 13, was it customary for women to be abroad on the streets as much as formerly?—A. No; the ladies, almost all of them, remained at home; very few went out afterwards.

Q. And consequently there was very little visiting from house to house?—A. Yes, very little.

Q. And consequently you would have very little opportunity to discuss this with your lady friends?—A. Comparatively little.

Q. When did they commence to go abroad as they did before? After any particular event?—A. I think perhaps they felt safer after the white soldiers came in, but I don't know that many of them went out even after that.

Q. I presume that you were pretty badly frightened during all this terrific volley firing you speak of?—A. I was.

Q. And excited, and common current events did not make much impression upon you; is not that a fact?—A. Possibly.

Q. And after the firing was over you became calm and collected?—A. Yes.

Q. This would naturally account for your being more sure of events which happened a little later in the evening than of those which had been occurring previous to that?—A. Yes; I think so.

Q. Will you please tell the court how the interior of your room is finished?—A. Do you mean the position of the furniture?

Q. No; just simply the material of the inside walls.—A. I think it has a board ceiling and, as is customary, covered with canvas and then paper.

Q. As to the walls; please tell the court about them. I mean to say, are the walls made of masonry, wood, plaster, canvas, paper, or what are they composed of?—A. I think, naturally, of wood.

Q. And this wood is simply rough finish; that is to say, is it covered with anything inside?—A. It is papered.

Q. Anything between the paper and the wood?—A. I think a ceiling and canvas and then the paper.

Q. By ceiling you mean wood; you don't mean the ceiling up overhead?—A. No; I mean the inside boarding or whatever it would be termed.

Q. And this hole which you describe as having been about 5 inches by 2½ inches was torn in the canvas and paper, I suppose. Was it also torn in the outside wood, the outside of the house?—A. I don't know; that I did not see.

Q. I think you testified a moment ago that you thought you heard about 15 or 20 men—do I quote you correctly?—answering to their names.—A. Not as many as that; 12 or 15, I think I said.

The counsel here objected as follows:

I object to the judge-advocate, in formulating a question, stating numbers or figures, or dates, or anything else different from what is stated by the witness. I have no objection to the form of his question, but I do object now, and would like the court to pass upon it. To conform with the evidence is what we want.

marked "B" was nearest the floor and the farthest from the ceiling?—A. The entrance of that bullet was nearer the floor than the exit. The entrance was about 7 feet, 3 inches, from the floor where it entered, and where it passed out it was about 9 inches higher.

Q. How wide is that room?—A. Twenty feet inside.

Q. Would you mind marking 20 in the middle of that room?

(Witness does so.)

Q. About how high from the ground is the floor of your room?—A. About 11 feet, 6 inches.

Q. And this bullet hole was some 7 feet, I think you said, higher?—A. Yes; above that.

Q. What is the character of the material on the inside of the walls of your house, please?—A. It is a frame building; the outside is covered with, I think, you call it California weather boarding; it is about ⅞ of an inch thick—that is, 2 by 4 inch studding. It is ceiled inside with what is called ship-lap lumber; that is about ⅞ of an inch thick, and that ceiling is covered with manta and papered, or canvas.

Q. The bullet that passed in the front of your house there, how did it effect this wood, manta, and paper?—A. The roof of the house is what is called a gothic roof, very steep pitch; the roof of the house projects down so that the bullet entered through the shingles, and it must have passed through the shingles, the sheeting of the rafters, and then through the ceiling, through the canvas, and through the paper. And where the opening is it showed, after it passed into the room, tore out a piece out of the paper; I never got up there and examined how big a hole was in the wood itself, but the opening in the paper is about 2½ inches horizontally and about 1½ inches up and down—a sort of oval hole. Where it passed out the other side of the wall it made a hole not much larger than that pencil, and when it went out through the shingles it made a pretty big hole. I had to put another shingle on the place to keep it from leaking through. Both of the holes on either side of the house went through the four thicknesses of lumber.

CROSS-EXAMINATION.

QUESTIONS BY THE ACCUSED.

Q. Which side of your house did that bullet enter?—A. Entered the Elizabeth street side, I would suppose you would call it—the west side, or south side, I don't know which; I call it the west.

Q. And came out?—A. The north side or east side.

Q. How do you know?—A. How do I know what?

Q. How do you know it came in on the Elizabeth street side and went out on the east side?—A. I know only by my judgment, and what the difference would be going in and going out—always the bullet is larger than where it goes in, and the splinters that came in that wall fell on my wife's shoulder and her nightgown and on my hand that was on her shoulder, and was picked up, and we have them in our house. If it had been going through the other way it would not have knocked any splinters on this side.

Q. As you look at that plat the bullet went in to your left, or the town side of that window, did it?—A. Yes, sir.

Q. How far to the left of the window? You have indicated it very close to it. How far to the left? Tell the court.—A. I don't

think it was more than 12 inches from the side of the casing, or left side of the casing, looking at it from this way, where it went in, but above the window.

Q. It was above the window, then, and 12 inches toward the town side?—A. Yes, sir; about 12 inches.

Q. It went through the shingles first?—A. Yes, sir.

Q. And then through the wall?—A. Went through the shingles and through the sheathing on top of the rafters that the shingles are nailed on and then through the ceiling.

Q. You are positive about that, are you?—A. I am; yes, sir.

Q. All right.

Mr. Gerome F. Cassiano, San Antonio, Tex., was duly sworn as interpreter.

Counsel for accused asked the interpreter if he had ever been in Brownsville, Tex., to which interpreter answered "Never."

TEOFILO MARTINEZ, a witness for the prosecution, was duly sworn, and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please state your name, residence, and occupation.—A. Teofilo Martinez, Brownsville, plasterer.

Q. Where were you on the night of August 13, 1906?—A. At Mr. Eturia's [Yturria's] house.

Q. In what city?—A. Brownsville.

Q. Where is this house situated with reference to Fort Brown?—A. On Washington street.

Q. How is the house situated with reference to Fort Brown?—A. To the south.

Q. How far from the garrison?—A. Only the width of the street.

Q. Ask him if he understands the map on the wall.—A. No; he does not understand.

Q. Tell him that is Mr. Eturia's [Yturria's] house—a ground plan—ask him if he can understand that. (Judge-advocate indicates on map).—A. No; he can not.

Q. This is the rear part of Mr. Eturia's [Yturria's] house; ask him if he understands that. (Judge-advocate indicates on map.)—A. Yes; he understands.

Q. Did anything unusual occur during the night of the 13th of August, 1906?—A. Where; at the house?

Q. In the town. Anything happen in the vicinity of his house which was unusual on that night?—A. The town was assaulted.

Q. Do you know what this is? (Hands witness photograph.)—A. Yes, sir.

Q. What is it?—A. That's the house belonging to Mr. Pancho Eturia [Francisco Yturria].

Q. Do you recognize what that is?—A. Yes, sir.

Q. What is it?—A. That's Mr. Eturia's [Yturria's] house.

Q. What is this—that street (indicating on picture)?—A. Washington.

Counsel for accused here addressed the court as follows:

We don't think that is sufficiently identified at this juncture to be introduced in evidence. We do not think the witness has sufficiently identified it to warrant its use as evidence. We do not object to this being admitted when it is properly identified before the court.

To which the judge-advocate replied:

I submit it for the opinion of the honorable court.

By the counsel:

I think with a little more questioning the judge-advocate may bring it out, but in the present form we object.

Q. Did you ever live at or near this house (handing picture to witness)?—A. I was there taking care of Mr. Pancho Eturia's [Francisco Yturria's] house.

Q. Were you living at or near this house on the night of the 13th of August?—A. I was in charge of Mr. Eturia's [Yturria's] house.

Q. Were you there that night?—A. Yes, sir. (Picture submitted in evidence, hereto appended and marked).

Q. You testified a moment ago that the town was assaulted; just what do you mean by the town being assaulted?

Here the counsel for accused objected as follows:

I object to the manner in which the question was translated to the witness.

(The question was reread and retranslated to the witness.)

By the counsel:

It is not a literal interpretation.

By the judge-advocate:

Will the counsel kindly interpret what the interpreter said, I would like to be informed.

By the counsel:

I make the objection that it was not interpreted literally to the witness in Spanish.

By direction of the court the interpreter stated in English exactly what he said in Spanish to the witness, as follows:

I said, a little while ago you stated that there was an assault on that night, now specify what kind of an assault. I put the question in three different ways.

The question was read again to the interpreter and again translated to the witness, which being satisfactory, the witness answered as follows:

A. That there were some shots fired.

Q. Tell him to describe just what occurred when the town was being assaulted, when those shots were fired. Tell everything he knows about it.—A. I can not say because I was not in the town.

Q. Where were you that night about midnight?—A. I was sleeping in the gallery of Pancho Eturia's [Francisco Yturria's] house.

Q. What gallery was this, of what room?—A. Of the kitchen.

Q. And this firing woke you up that you heard that night?—A. Yes, sir.

Q. From what direction did it appear to come?—A. Toward the barracks.

Q. Which barracks?—A. The quartermaster's.

Q. What did you do then?—A. At that time I was asleep there and I sit on the cot.

Q. What did you do then?—A. I heard some shots. Two volleys.

Q. From what direction did these volleys come?—A. Toward the quartermaster's.

Q. From what direction did these two volleys appear to come?—A. From the quartermaster's.

Q. Did you see anybody?—A. No, sir.

Q. Did you see anything?—A. No, sir.

Q. Did you hear any other sounds besides those of firing?—A. No, sir.

Q. Perfectly still night?—A. Yes, sir.

Q. Did you hear any trumpets sounding?—A. Yes, sir.

Q. Before or after the firing?—A. After the volleys.

Q. Did you hear firing after the bugle call?—A. Yes; they could up here toward the center.

Q. Center of what?—A. Center of town.

Q. The first shot you say you heard came from the barracks?

By the counsel:

I object to that; he did not say barracks, he said quartermaster's.

By the judge-advocate:

I leave it to the record.

The testimony of the witness on that point was read to the court.

The accused, his counsel, the reporter, the interpreter, the witness, and the judge-advocates then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

The court desires that you ask the witness what he means by the word "Quartermaster," by saying "Quartermaster," and, if necessary to facilitate it, we can have it pointed out on the map possibly.

Q. What do you mean by quartermaster?—A. What do I mean to say?

Q. What do you want us to understand when you use that word; what do you understand by that?—A. It is the quartermaster.

Q. Do you mean any particular building or group of buildings?—A. Quartermaster's. I mean the quarters of the troops.

The court then, at 5 o'clock p. m., adjourned to meet at 10 o'clock a. m., February 6, 1907.

CHAS. E. HAY, Jr.,
Captain, Acting Judge-Advocate, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., February 6, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocates. The accused, his counsels, and the reporter were also present. The interpreter was also present.

The reading of proceedings of February 5 was dispensed with.

The judge-advocate then proceeded with direct examination of witness TEOFILO MARTINEZ, who was reminded he was still under oath.

Q. You spoke of having heard two volleys; will you state whether these volleys sounded from the inside or the outside of the garrison wall?—A. No, sir; I can not say where they were.

Q. How close to you did they sound, in the Eturia [Yturria] house?—A. From the inside of the garrison wall.

Q. What did you do?—A. When?

Q. When you heard these volleys?—A. I remained on the cot where I was sleeping.

Q. Did he remain on the cot where he was sleeping for the remainder of the night?—A. No, sir; as the volleys were many I came down on the stairway to a brick room.

Q. Where was the brick room?—A. Toward the alley.

Q. Were there any bullets flying?

By the counsel:

I do not think that was properly transmitted to the witness, properly—literally translated to him.

(The question was repeated by the judge-advocate and retranslated to the witness.)

A. If any bullets struck the house?

Q. The question was were there any bullets flying; that is, did you hear the sound of bullets?—A. Yes, sir; I did hear them.

Q. Did any strike the Eturia [Yturria] house?—A. Yes, sir.

Q. What portion of the house?—A. On the kitchen and on the dining room.

Q. After you went into the little brick house was there more firing?—A. Yes, sir; you could hear them toward the center.

Q. Did you hear any sound of footsteps or running past the little house?—A. No, sir.

Q. Can you see the barracks distinctly from the Eturia [Yturria] house?—A. No, sir.

Q. What intervenes?—A. Intervenes from where?

Q. Anything between your house and the barracks?—A. If there is anything between the house and the barracks? The fence.

Q. Any trees or buildings?—A. Inside of the yard there are trees and in the alley there is an elm.

Q. Did you examine the house of Mr. Eturia [Yturria] next day?—A. Yes, sir.

Q. What did you find?—A. Some shots.

Q. By shots you mean the holes?—A. Shots that I found in the house.

Q. Do you mean bullet holes?—A. He says bullets scattered about.

By the counsel:

I object. This man is not interpreting properly at all. I submit it to the man who is assistant interpreter. All I ask is when this witness gives an answer, whether it be responsive or not, it be put on record, we want the reviewing authority as well as the court to know whether this witness is intelligent enough to respond to the questions as put. We want the answers as given by the witness literally.

To which the judge-advocate replied:

I would like to make a brief statement to the court, and that is, the interpreter is interpreter for the Federal court downtown and he has been instructed always to translate freely and not literally, and he finds it difficult to get away from that, but I think he will now translate literally.

By direction of the court the interpreter was here instructed that he must give the exact words of the witness, and if he does not understand the question can be asked again.

By the counsel:

Now, I ask that the interpreter be instructed to interpret literally what the witness said in response to the last question fully.

The interpreter, by direction of the court, was so instructed, and replied:

He says:

Shots, shots, what's understood by shots, bullets. (And he made the motion.)

Q. What did you do with the bullets that you found?—A. One I loaned to the servant of Mr. Porter and the other one Ygnacio Garza and I took out, that we took out of a well's wall. Another one that remained inside of the dining room door toward the north; another one that I found on the floor by the side of the table of the dining room, and that one remained in my possession. That's all.

Q. Have you that bullet now in your possession?—A. I had it, but it was lost moving from one house to another.

Q. Did you look through the bullet holes to see from what direction the shots apparently came?—A. From the garrison.

Q. Were there ever any bullet holes in your house before that; that is, the Eturia [Yturria] house I mean?—A. No, sir.

Q. Have you seen any new ones there since?—A. Sir?

Q. Have you seen any new bullet holes in the house since that time?—A. Before that time?

Q. Since that time?—A. Afterwards?

Q. Yes.—A. Besides those bullet holes?

Q. Yes.—A. No, sir.

CROSS-EXAMINATION.

QUESTIONS BY THE ACCUSED.

Q. How long after the first shots you heard was it before you went into the brick house you mention?—A. How long after the shots?

Q. (Question was repeated.)

A. Ten minutes.

Q. Did you ever examine the Eturia [Yturria] house for bullet holes previous to that night you have testified to?—A. No, sir.

Q. How do you know that the bullets you have testified to came from the direction of the barracks?—A. Because the bullet holes told the direction in which they came to the house.

Q. Is that the only means he had of determining that direction?—A. Yes, sir.

Q. What did he do in the brick house when he went into it?—A. Only to stay there to defend himself—to evade the danger.

Q. What position did he take to defend himself?—A. Sir?

Q. What position did he take in order to defend himself?—A. Inside the house?

Q. Yes.—A. Nothing more than to remain inside of the house.

Q. Ask him whether he stood up or sat down or laid down—exactly what he did.—A. I only sit there.

Q. How long?—A. Until daylight.

EXAMINATION BY THE COURT.

Q. You said you heard more bullets toward the center; what do you mean by the center?—A. Town.

The court then took a recess until 10.40 o'clock a. m., at which hour the members of the court, the accused, his counsels, the reporter, and the judge-advocate resumed their seats.

The judge-advocate here addressed the court as follows:

The prosecution desires to introduce a witness at this time and to request the privilege to suspend his testimony upon the arrival of quite a material witness, who has been sent for by the convening authority and can not at present appear before the court.

By the counsel:

It is entirely within the province of the court and we do not wish to object.

The judge-advocate was then instructed to proceed.

Mr. J. P. McDonnel, a witness for the prosecution, was duly sworn, and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please state your name, residence, and occupation.—A. J. P. McDonnel; residence, Brownsville, Tex.; occupation, carpenter and builder.

Q. Mr. McDonnel, will you kindly step over here to this map and take this pointer, and explain to the court—first I will ask you where you were on the night of August 13, 1906?—A. Brownsville, Tex.

The judge-advocate stated that he desired to here suspend taking of testimony from this witness, and the witness was temporarily excused.

Lieut. Roger S. Fitch, First United States Cavalry, a witness for the prosecution, was duly sworn, and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Will you please give your name, rank, and present station?—A. Roger S. Fitch; first lieutenant, First Cavalry; permanent station, Fort Clark, Tex.

Q. Have you been to Brownsville recently?—A. Yes, sir.

Q. When, please?—A. I made a trip to Brownsville on the 31st of

last month, spent the first day of this month there, and returned here the following day.

Q. Will you kindly locate on that map, if you can, the house known as the Eturia [Yturria] house?—A. The Eturia [Yturria] house is this house here, marked 7, on this map.

Q. Have you ever visited that house?—A. On the afternoon of February 1 I went to the Eturia [Yturria] house, and, knocking at the door, Mrs. Eturia [Yturria] came to the door and showed me through the house.

Q. Did this house show any evidence of having been injured by any external physical force?—A. Yes, sir.

Q. What apparently caused this injury?—A. The house showed very plain signs of having been fired into. I asked Mrs. Eturia [Yturria] when I entered the house if the caretaker, Teofilo Martinez, was there, to which she replied in the negative; I then asked her if she could show me any bullet holes said to have been made about the time of the occurrences of August 13 and 14. She said she could. She took me to the rear part of the house and pointed out to me several—three, I think—bullet holes entering from the side of the garrison——

The counsel here objected as follows:

I object to any further testimony as to those until the witness has shown positively that he examined the same holes testified to, or that Mrs. Eturia [Yturria], who gave him the information, was there present on that night, and that those holes are the same identical ones. I have no objection to that evidence going before you in proper form, but until proper foundation is laid showing this witness knows whereof he speaks in regard to those bullet holes, it is thoroughly incompetent, irrelevant, and immaterial.

To which the judge-advocate replied:

The judge-advocate does not care to take up the time of the court with a reply.

The accused, his counsels, the reporter, the witness, and the judge-advocates then withdrew and the court was closed, and, upon being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce the decision that the objection of the counsel for the accused is sustained, and that the witness be instructed to confine his testimony to direct evidence—what he knows himself—and avoid hearsay evidence.

The accused declined to cross-examine the witness.

Mr. J. P. McDonnel was recalled by the prosecution, reminded he was still under oath, and testified as follows:

DIRECT EXAMINATION CONTINUED.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Will you kindly point out on the map, if you understand it, where you were on the night of August 13, at about midnight?—A. I live in this block near the garrison wall, about the middle of the block, Adams street. I am not familiar enough with the names of the streets, but this looks all right. I live between Fourteenth and Fifteenth in this block, about the middle of the block.

Q. On Adams street?—A. Yes, sir.

Q. Did anything unusual occur on the night of August 13, 1906? If so, state to the court what.—A. Some shooting occurred on that night.

Q. Anything else in connection with that?—A. Well, on the night of the 13th of August I was in my room and I heard some firing. I had not undressed; I had simply laid down on the side of the bed and was reading a newspaper and had sort of dropped off to sleep and I heard some firing; I don't know how many shots. I was asleep when it occurred and it woke me up. Maybe four or five shots; I don't know how many. I got up and put on my shoes and hat, went out and turned down the street this way until I got to this street. I turned the corner of Adams and Fifteenth streets.

Q. And proceeded in what direction?—A. South, I suppose; or toward the river until I come to the mouth of this alley right here between Washington and Elizabeth streets—right about there. As I was proceeding down this alley about that time there was two or three shots fired over somewheres in the neighborhood of this place here between barracks B and D, as marked on the map, somewhere in the neighborhood of them. I can't say whether right in between them, and at the same time I saw one shot fired from the upper gallery of this barracks B, and that takes my progress right here. I stopped right here, at the corner of the alley that runs between Elizabeth and Washington streets, at the corner of Fifteenth street. The next thing that attracted my attention was about twenty men right at the corner of Fifteenth and Elizabeth streets. About that time they divided into two squads. One squad went around the corner; they turned out of my sight up Elizabeth street; I can't tell where they went; the other half of the men of the two squads, one turned around the corner and the other squad turned up this way, up Fifteenth street toward where I was at the corner of the alley and Fifteenth street. I was standing here and I recognized what they were.

Q. State to the court what they were.—A. They were United States negro soldiers, or at least they were negroes in United States uniforms, with guns.

Q. Continue, please.—A. As I say, I was standing here at the corner of the alley and Fifteenth street when they started from this point, Elizabeth and Fifteenth streets, this way. I done the same thing, but only proceeded a few steps up; I don't think I got as far as the middle of the half of this block. It is the alley between Elizabeth and Washington streets.

Q. Will you kindly continue.—A. They reached the mouth of the alley and they turned up the alley. When they turned up the alley, I came down back to the mouth of the alley to see what they were going to do.

Q. What did you then see?—A. I saw men proceeding up this alley, to about the corner of Fourteenth and this alley, and commence firing into houses—into a house, the residence of Mr. Cowen. I recognized it at the time as being Mr. Cowen's house.

Q. Was there light enough for you to see up this alley?—A. Yes, sir; there was light enough for me to distinguish the forms of the men.

Q. Artificial light?—A. No, sir; just natural light; I don't think there were any lamps in the alley at all; if they did, I never noticed. I might have seen some in some of the houses or windows.

Q. What kind of a night was it?—A. I can't hardly say, but I think it was a starlit night.

Q. Now, what became of those men after you saw them at the corner of the alley and Fourteenth street?—A. When I saw this firing I was standing right here, as I told you. I went right straight back home as straight as I could, and went right straight to the house where I live, so saw nothing more of them.

Q. You are positive in your own mind that these men were negroes dressed in the uniform of United States soldiers?—A. Yes, sir; I am positive of that. That is, the men I saw assemble at this corner and proceed up to where I was at.

Q. And you are positive that these are the same men you later saw farther down the alley?—A. Well, I am positive in my own mind they are the same men, but remember—from the time they turned into that alley, and I come there from where I was at, down to the mouth of the alley—they had been out of sight a few moments.

Q. You are satisfied in your own mind, though?—A. I am satisfied in my own mind it was the same parties.

Q. Was there any sound of firing after that that you heard?—A. Oh, quite a lot after that; several shots fired after that.

Q. Was there any lull in the firing after you saw these men down the alley?—A. Well, I don't know what you mean by ——; it was nearly a continuous—of course there might have been a momentary lull, and was for a moment, but it was nearly continuous shooting.

Q. How long did all this firing last?—A. In my mind I don't think it could have lasted more than six or seven minutes.

Q. Is there anything not brought out by previous interrogation or questioning that you care to say about this case?—A. No, sir; I don't know that there is.

Q. Have you ever lived in the North?—A. No, sir.

The court then took a recess until 11.40 o'clock a. m., at which hour the members of the court, the accused, his counsels, the reporter, and the witness and the judge-advocates resumed their seats.

CROSS-EXAMINATION.

QUESTIONS BY THE ACCUSED.

Q. Where have you lived all your life, Mr. McDonnel?—A. Principally in the State of Texas.

Q. Give me an idea where.—A. About southern Texas; in fact, I have lived all over the State of Texas, more or less.

Q. And you are how old?—A. I am in my fifty-third year.

Q. How long were you in Brownsville at this time?—A. Just a little over a year; about thirteen months before this occurred.

Q. And how long did you stay there after it occurred?—A. Up to the present time.

Q. Where were you when you gave your evidence to the committee composed of Mr. Purdy and Major Blocksom?—A. In Brownsville.

Q. What were you employed at at that time?—A. My business—carpenter and builder.

Q. For whom?—A. For the American, Rio Grande Land and Irrigation Co. Not in Brownsville—at Lonsboro, about 40 miles out from Brownsville.

Q. You came down then to Brownsville for the purpose of giving your testimony?—A. Yes, sir.

Q. Who were you working for on the night of the 13th of August?—A. One Andrew Goldhammer, contractor.

Q. After you saw these men firing into the house of Mr. Cowen, on the corner of Fourteenth street and the alley, where did you say you went?—A. I went directly home.

Q. Go to bed?—A. No, sir; I didn't go to bed.

Q. Why not?—A. I was not in any humor to go to bed, then.

Q. What did you do?—A. I met a friend of mine that lived the next door, and, I think, he was at that time on his way to town. He owned a saloon in town, and I spoke to him and told him what I had seen, and told him I didn't think it safe for him to go to town, and detained him there until all the firing was over; everything had ceased and become quiet, and then he proceeded down town to his saloon.

Q. How long did you stand there and discuss it?—A. Where at? In front of my residence? Is that what you have reference to?

Q. I asked you how long you detained him?—A. It may be two or three minutes, or something like that.

Q. Then you think in two or three minutes everything became safe from being absolutely unsafe before?—A. Well, I don't know how to answer that. When the firing ceased, and I was under the impression there was no more shooting going on uptown, I then considered it safe to go downtown.

Q. Do I understand you to say that in two or three minutes after you reached your home the firing absolutely ceased and you then considered it safe to go downtown?—A. I told you I hardly knew whether it was two or three minutes or four or five minutes.

Q. Give the court the best of your recollection of this time; it is material.—A. I don't think it could be longer than five minutes we remained at the gate.

Q. You then went downtown?—A. Yes, sir.

Q. What did you do then?—A. We went directly to his place of business—saloon.

Q. Tell us what you did; we want to know.—A. We entered the saloon and I met a policeman there and he told me there was a dead man in the back yard. When he told me so he turned back and I went with him and found a dead man in the back yard near the back door of the saloon, and I don't remember whether we examined the man or not, but I saw the man examined afterwards, and he was shot directly through the body.

Q. Is that all you did?—A. That is all I know now, only that we went back into the saloon and we was there quite a while and there was nothing of importance worth relating that occurred there at that time.

Q. Please let the court be the judge of whether it is important or not. I wish to know what you did from 12 o'clock that night, the time you testified to. I have a right to your best recollection of your actions.

The judge-advocate here objected as follows:

I object to all this triviality of detail covering the record and taking up the time of the court. If the defense has any special point it wishes to bring out I think it can be brought out by questioning and not telling him to start at 12 o'clock and check up minute by minute what he did the balance of the night.

To which the counsel for accused replied:

I have been before many courts in several capacities, and I have never yet heard it stated that the defense was not entitled to the best recollection of what any witness did, especially if he is a material witness, during all the time covered by an indictment or charge. This witness, as you will recall, has testified with great particularity as to certain facts, and I wish to see how accurate his memory is as to other facts, and the question, I beg to say, is certainly simple and perfectly to the point, calls for no improper evidence, and ought to be intelligible to a witness of that age, and I ask for a ruling of the court as to whether I am entitled to it.

The accused, his counsels, the reporter, the witness, and the judge-advocates then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to inform you that the objection is not sustained, but counsel be requested to endeavor to so frame his questions as to avoid, so far as possible, introduction of irrelevant matter.

The court then took a recess until 2 o'clock p. m., at which hour the members of the court, the accused, his counsels, the reporter, and the judge-advocates resumed their seats.

The counsel for the accused then addressed the court as follows:

May I ask the court, as I understand the ruling of the court, the objection being not sustained, there is no objection to this particular question. That being the case, then the counsel is left to the undoubted inference and conclusion that there must be some objection to some method of examination heretofore on the part of the defense. First, let me assure you as a court that in so far as I, as counsel, can comply with that order it shall be done in future, but I wish to advise the court, and I assume in doing so that you have not read any of the various reports of committees and inspectors who have been sent to investigate this matter. If so, and you, or any of you, have formulated a positive conclusion or opinion as to the guilt or innocence of the enlisted men of the Twenty-fifth Infantry stationed at Brownsville on that occasion, then, in my opinion, and I speak for the defense, as this is alleged positively in the second specification, the guilt of the men stationed there at that time must be proved as a basis upon which to predicate guilt of the accused in this case—then such person who has read such evidence and has formulated such opinion is, in our opinion, disqualified to sit further on this court. I take it, therefore, that you have not read these reports, and that, therefore, you do not understand, and can not until the case is a little more advanced, the necessity—the absolute necessity, I say—that the defense feels for cross-examining with great minuteness, more than is demanded in the ordinary trial of military cases, all of the witnesses brought up by the prosecution. And because each and all of these witnesses have been examined ex parte from once to three or more times, there has been no time when they have been subject to a cross-examination to test their accuracy; there are naturally and unnaturally, if I may use such an expression, differences in those statements, and each and all of those have been published to the country at large, they have caused throughout the press of this country a criticism of the administration of the Army, and this client of mine, whom it is my duty to defend to the utmost, so that, consistent to the obligation I owe, first to the Army, second and finally and all the time to my client, I shall comply strictly with your request, but in view of these statements made under oath and not under oath, and to the fact that it has appeared affirmatively that these witnesses have discussed and rehashed these things among themselves, I wish to know, and I have a right to know, and we shall insist by all the means we can develop in your presence, so that this record may show—so that you may know primarily—so that the record may show to the reviewing authority and the country may know what is truth and what is based on the subject of these various conversations, and this is the object of this minute cross-examination and, as I stated before, I shall comply carefully with the mandate of the court in so far as consistent with the absolute right and the protection of this client.

To which the judge-advocate replied:

In reply I wish to say there is no need for further oratory on my part. If counsel obeys the mandate of the court it is perfectly satisfactory to the prosecution.

The accused, his counsels, the reporter, and the judge-advocates then withdrew, and the court was closed, and on being opened the court took a recess until 2.45 o'clock p. m., at which hour the members of the court, the accused, his counsels, the reporter, and the judge-advocates resumed their seats.

The president of the court then announced, in their presence, as follows:

In view of the remarks of the counsel for the defense, in which he stated that he assumed that the members of the court had not read newspaper reports regarding alleged disturbances at Brownsville, the court instructs the counsel for defense that if he desires now to question the competency of any member to sit in the trial of this case, he has the court's permission to challenge such member and place him on his voir dire, for any cause which may have come to counsel's knowledge since the arraignment of the accused. The court here cites page 87 on Treatise of Military Law of the United States, by Col. George B. Davis.

Counsel for the accused here addressed the court as follows:

May it please the court, there is clearly a misapprehension as to what counsel said, or intended to say. First, let me say that the counsel is fully aware that he has the right at any time, when new matters come to him, to challenge any member of this court for cause discovered. That is primary in military law. I do not wish to say or to be understood as stating that I have any objection to the court reading any newspaper accounts of any occurrence that may have found its way into the print of the newspaper, because it is well understood by every man in the country that newspapers seldom, if ever, get a full report of any matter that appears in their pages, and, if I have created in the minds of the court, or any member of it, the impression that I refer to the newspaper, I hope you will eradicate it at once; but I do refer to the question of reading the official reports published by the War Department and other departments of the Government at Washington, Senate documents, etc., which contain what you and I and every man who is familiar with Government affairs knows to be correct, because under the official seal of approval of that department of the Government, and you have a right to believe that that evidence, in so far as it is of value, is accurately reported and is worthy of credence, and if—and I repeat—any member of this court has read these various official documents from the War Department, and has arrived at a conclusion from reading those documents, a conviction, if that word sounds better, as to the participation of the colored troops stationed at Brownsville, Tex., on August 13 last, in the alleged riots, then I say he is objectionable as a member of this court. We care nothing whatever for any opinions you may have formed from reading newspapers, because we expect and intend to eradicate any false impression—most impressions that you get from newspapers are false—that you have acquired from such sources.

By Colonel Stevens, member of the court:

As a member of this court, my mind is not exactly satisfied as to the duty of the counsel for the defense. I would say that while I have never read the official reports of the War Department, I have read the accounts in the papers of those reports, and, furthermore, while my mind is perfectly free and unbiased——

In accordance with motion by member of the court, the accused, his counsels, the reporter, and the judge-advocates then withdrew, and the court was closed, and on being opened took a recess until 3.30 o'clock p. m., at which hour the members of the court, the accused, his counsels, the reporter, and the judge-advocates resumed their seats.

The member then addressed as follows:

Under permission of the court I would like to state for my own part, in answer to generally conditional objection made by the counsel—I would like to commence where I left off, as I remember, and go on to say that, while my mind is perfectly clear upon every issue as set forth in the specification and charges, I have, as I have stated before, read the records in the papers of the reports, and that I can't say that I didn't get some impression from them regarding some side issue which may be afterwards brought out on the trial. In other words, I can't say and I wouldn't want them to think that I go into this trial with my mind a blank, but I can say that if I have formed any impression that I will weigh the evidence to the contrary that much more carefully. I feel that I ought to make this statement to them, because it is due them, and I may simply add finally that if I were being tried— were myself the accused—and any member in my position, I would never feel, knowing all the circumstances, that I would object to him in the trial of my case, but I want them to feel perfectly free to raise an objection to me after this statement.

The counsel then requested that the member be put upon his voir dire.

Colonel Stevens was then duly sworn upon his voir dire.

Q. Aside from the newspapers which you mentioned, have you read any official reports from the War Department or from the Senate in regard to what is known as the Brownsville affair?—A. I have not.

Q. Have you conversed with any of the witnesses in regard to the so-called Brownsville affair?—A. None that I know to be witnesses.

Q. I refer solely, in your conversation, to the merits of the question. Did you discuss with any of the witnesses the merits of the question in so far as it involves the soldiers of the Twenty-fifth Infantry?—A. I say with no one whom I know to be a witness. I don't know exactly whom the witnesses will be; I don't think I have discussed this with anyone from Brownsville or anyone I know to be on the list of witnesses.

Q. Have you at any time expressed a conviction as to the guilt or innocence of the soldiers stationed at Brownsville at that time—at any time you can recollect?—A. I may have expressed an opinion on that subject.

Q. Can you recollect to whom you expressed such opinion and what opinion you expressed?—A. I can't recall exactly to whom I expressed the opinion; I think my opinion was that the soldiers did the shooting.

Q. Pardon my calling your attention to a date. Were you in Oklahoma City on or about November 11 last?—A. Yes.

Q. Do you recollect a conversation that you had in regard to this subject with Major Penrose, the accused in this case, and at which interview some others were present?—A. Regarding this case particularly?

Q. Regarding the guilt or innocence of the soldiers at Brownsville?—A. I recall a general conversation, or being present when there was a general conversation where Major Penrose was present and several other officers. I think the department commander and his aid, if that is what is referred to. I don't remember any conversation with him particularly, though I may have had it.

Q. Did you not at that time use language to the effect substantially that the soldiers were guilty and an example should be made of them, on the occasion I refer to?—A. I don't remember saying that—I might. One would have followed the other; if I considered them

guilty I should have said very quickly, very readily, that an example should be made of them.

Q. Did you or did you not have a conversation with anyone in Fort Bliss on this same subject?—A. I might or might not; I don't remember. Probably—it is very possible I did. I was not on the court at that time and may have discussed it with other officers.

Q. The date of this was approximately a month or so later than November 11 last; do you recall the time you were at Fort Bliss?—A. Yes; I was there on inspection; I may have discussed it.

Q. Do you remember having any conversation with Mrs. Powell on this subject upon that occasion?—A. I do not. I don't remember; I might have had. As I say, I might have discussed it with a number of persons there. I was the guest of Captain Powell and it is possible I discussed it with him or the members of his family. As I say, I was not at that time a member of the court.

Q. What is your best recollection as to having expressed positively an expression as to the guilt or innocence of the enlisted men at Brownsville, at any time previous to this trial?—A. It would be hard to recall exactly what I may have said, but it was probably in line to the effect that my impressions were, and belief at that time from what I had heard, that they had committed the acts charged—aside from any question of the officers.

By counsel for the accused:

I would like to state to the court at this juncture that the first intimation I had of any such question as has been raised was brought to my attention late last evening. That I declined to take any action in the matter until I could investigate more carefully. I did not want to place the matter before the court without some evidence, so that they could determine distinctly as to what action to take in the matter. I regret exceedingly that I have no one here except Major Penrose, but I ask that he be sworn in this preliminary matter, to state his recollection of the conversation that has been referred to.

Maj. CHARLES W. PENROSE, Twenty-fifth Infantry, was duly sworn.

Q. Please state to the court, as near as you can recollect, the date of any conversation you may have had or heard with Colonel Stevens.—A. The date is fixed in my mind, November 11, from the fact that Major Clarke's battalion of the Twenty-sixth Infantry arrived at Fort Reno on that date. The day before I had received a telegram from the division commander, General McCaskey, that he would like to have me meet him in Oklahoma City the next day, November 11. In accordance with his wish I went to Oklahoma City, and the General, having been up most of the night, did not get up until rather late in the morning. During the morning, before the General sent for us, Colonel Stevens, Major Blocksom, and myself were talking together over this matter. And, as I recall the incident, just before we entered the General's room—he had sent for us—Colonel Stevens said that it was necessary to make an example of these men. We were talking then about the order that was to be issued, or had been issued—I have forgotten what that date was—for all the men of Companies B, C, and D, of the Twenty-fifth Infantry, who were at Brownsville on the night of August 13, 1906, to be discharged. My recollection is that Colonel Stevens stated, as I have just stated, that it was necessary to make this example—referring to the discharge of all of the men of those three companies. I would

like to change that in one particular only—that the Colonel expressed an opinion that some men were guilty, and it was necessary for the discipline of the service to discharge all of them.

By Colonel Stevens:

I would like to ask that, as long as the matter has been made a matter of investigation, that Major Blocksom be sent for to give testimony. I will state that eventually I shall ask to be excused from sitting as a member of this court. I would like to add here, since the question has been taken up, that the counsel mentioned this first came to him last night; that I spoke to Major Blocksom at noon and told him that issues had been raised in this trial which I did not think were covered by the specifications and charges, and, while I was perfectly competent to try these charges, I did have my opinion on the side issue that was raised and which I did not consider a necessary part of the evidence. I told him I expected to come before the court and announce that and state it to the counsel of the accused. He advised me to speak to the court about it before I mentioned it in open court, and I did that.

By the counsel:

I would like to ask what part of the testimony the member of the court refers to when he says he has formulated an opinion—what part of the charges, I should say. He referred to them and he told Major Blocksom at noon that he formed a positive opinion and considered it not essential to the case.

By Colonel Stevens:

I refer to that part with reference to the guilt of the Twenty-fifth Infantry, and when that was referred to at Oklahoma there was, to my recollection, no question upon that point; at least it did not occur to me. I don't remember the issue having been raised. The point was whether some means of punishment should not be taken, as the men could not be discovered. I did express an opinion on that point and may have said in my opinion—and if it came up I would have said in my opinion—the men had done the shooting.

By the counsel:

In view of the admission of the member that he has as late as to-day expressed a positive opinion as to the guilt or innocence of the enlisted men, and as this is a material point that is absolutely necessary for the prosecution to prove in order to make their case good, although the opposite proposition does not necessarily follow. we enter an objection to Colonel Stevens sitting further as a member of this court.

By Colonel Stevens:

I would like to be excused, but at the same time I would like Major Blocksom's testimony. I don't want to take up the time of the court.

By the counsel:

The defense has no objection whatever to Major Blocksom being called, but we wish to remind the court that we rested our objection solely upon the admission made under oath by the member that he had expressed an opinion as to the guilt or innocence of these enlisted men as late as to-day noon, not upon the subject-matter of investigation previous to this time. I don't care to interfere with the action of the court in any way, but suggest that the final objection was based, as you will bear me out by the record, upon the admission of the member as to as late as to-day.

By Colonel Stevens:

It must be understood, Mr. President, that I made that admission conferring with the inspector as to my duties under the impression I had received and a discovery of the line of defense of the accused that was developed, but I conferred with Major Blocksom as to what he thought it was best for me to do.

(Question asked by the court under voir dire.)

Q. Have you formed an opinion in regard to the complicity of the Twenty-fifth Infantry in the occurrences at Brownsville on or about

August 13, 1906, which can not be modified or removed by evidence?—A. I have not, emphatically. But I would renew my request to be excused, in view of the objection of the accused.

By the counsel:

May I have it appear of record—and have it actually occur—to have the second specification of the charge read? I want the court to understand our position in the matter, and that it is necessary, absolutely necessary, in order to secure an intelligent verdict from the court, that they pass upon that question.

As requested, the judge-advocate then read to the court the second specification of the charge.

The court then took a recess until 4.25 o'clock p. m., at which hour the members of the court, the accused, his counsels, the reporter, and the judge-advocates resumed their seats.

Maj. A. P. BLOCKSOM, a witness (requested by the member on voir dire), was duly sworn, and testified as follows:

Q. Please state your name, rank, and present station.—A. A. P. Blocksom; major, inspector-general; St. Louis, Mo.

Q. Were you present during a conversation between Colonel Stevens and Major Penrose, last November, in Oklahoma City?—A. I have no recollection of being present.

Q. Did you converse with Colonel Stevens this noon, as both of you came over to the quadrangle, as to his plan of stating to accused frankly his feelings as to accessory point raised in this case?—A. Yes.

Q. What was the effect of this conversation?—A. I don't know what the effect of it was.

Q. I suppose "the substance" is what is meant; what was member to do?—A. I understood that he intended to state to the court that he believed the crime down at Brownsville on the 13th of August was committed by soldiers of the battalion Twenty-fifth Infantry.

The accused, his counsels, the reporter, and the judge-advocates then withdrew and the court was closed; and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce that the challenge is sustained. The challenged member will be excused.

Colonel Stevens then withdrew.

The court then, at 5 o'clock p. m., adjourned, to meet at 10 o'clock a. m. February 7, 1907.

CHAS. E. HAY, Jr.,
Captain, Acting Judge-Advocate, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., February 7, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocates. The accused, his counsels, and the reporter were also present.

The president of the court here announced that the court would be cleared; therefore the accused, his counsels, the reporter, and the judge-advocates withdrew, and the court was closed. Upon the court being opened, the accused, his counsels, the reporter, and the

judge-advocates resumed their seats. There was no announcement made by the court.

The reading of the proceedings of February 6 was dispensed with.

Mr. J. P. McDonnel, a witness for the prosecution, again took the stand, and was reminded he was still under oath.

Upon request of the witness his answer to second question, on page 101 [52] of the record, was read to him and he stated as follows: No; I could not say they were firing into Mr. Cowen's house, for possibly they might have been a little past or a little toward me. I meant to say in the immediate vicinity of Mr. Cowen's house; the guns were pointed in that direction.

CONTINUATION CROSS-EXAMINATION.

Q. What did you do in addition to what you have already testified to after you returned to your house and had the conversation with your neighbor?—A. I believe I stated yesterday evening that I and him went immediately after we left our place to his place of business, on Elizabeth street. He is a saloon man. We entered the saloon, and I met a policeman; the policeman told me there was a dead man in the back yard. I don't know whether I asked him to go back with me or not, but he went back with me, and we found the dead man in the back yard. I remained in the vicinity of the saloon some two or three hours with the rest of these men until such time as the coroner and the undertaker came and removed the body, with the exception of one interval. I went to the drug store, being informed that the lieutenant of police had been severely wounded; I went to the drug store to visit him, and found him there with his right hand all bandaged up. He told me he was shot; he told me he had been shot by negro soldiers. I asked him to take a glass of water, and he said: "No; I don't think it is good for a wounded man to drink water," and he said: "I will take a glass of whisky." I think somebody brought him a glass of whisky; I don't know who it was, and I don't know as I remember seeing him take it.

By the counsel:

May it please the court, I simply want to know what he did on that night.

Question was repeated to witness.

By the judge-advocate (to witness):

The court instructs you to tell what you did, and not to bring in, unless it is absolutely necessary, anything anybody else did or said; they want to know your movements.

By witness:

Am I not telling them? I am trying to tell them.

Q. Is that all you did?—A. That's all I did; only went home and went to bed about 4 o'clock in the morning, I reckon.

Q. About what time?—A. Somewheres in the neighborhood of 4 o'clock. It might have been later, and it might have been earlier.

Q. Did you take any part in the inquest held over the dead body?—A. I think I helped remove the clothes from the dead man for the coroner to see the wound. I was present, and I think I helped; I am not sure. I saw it done.

Q. Did you give any testimony covering the subject at the inquest?—A. No.

Q. Have you discussed this subject with anybody in Brownsville since the occurrence?—A. Most assuredly I have, many times. It was the topic of the town.

Q. Have you told your side of the story many times?—A. Quite a number of times.

Q. Have you heard the story from the other witnesses?—A. I think I have heard various witnesses make different statements verbally, on the streets and about.

Q. How often?—A. Many times; I could not say how often; quite a number of times.

Q. Tell us who you talked it over with.—A. I have talked it over with half the citizens of Brownsville; I can't recall any particular name.

Q. Could you give us any idea of about how many times you discussed that with various witnesses?—A. I don't know as me and any particular witnesses have discussed the subject and compared notes; such a thing I don't think has ever occurred; I have not; I mean I have not discussed the subject and compared notes with no witnesses. I have told them, and they have told me what they have seen, just in ordinary conversation.

Q. Your recollection of these events was pretty vivid the next morning, was it not? That is, the morning of the 14th of August?—A. I might have been a little confused the next morning; yes, I was a little stirred up; things might have been a little confused in my mind.

Q. Why? What confused you?—A. Well, I labored under a little excitement that night, I had not hardly got over the excitement the next morning. I suppose you understand how a man would feel the next morning after an occurrence of the kind.

Q. But you were somewhat confused the next morning?—A. Might have been to some extent, I don't remember that I really was. Had no occasion to be that I remember of.

Q. Were you clear in your mind the next morning as to what you did and what you saw?—A. Oh, yes.

Q. Very clear?—A. Yes.

Q. Those events were very clearly fixed in your mind?—A. Yes, sir.

Q. When did you testify before the Citizens' Committee?—A. I think it was the next day, I am not sure.

Q. Next day, when these events were very clear in your mind, you testified to the Citizens' Committee?—A. I think it was the next day; I don't remember the date; I think it was the next day.

Q. Now then, you are very clear in your own mind what you did before the Citizens' Committee, were you when you testified before them?—A. I don't know whether I am or not.

Q. Were you right when you told that committee that you had not taken off your shoes and had laid down with your shoes on?—A. No, I didn't tell them that I don't think; no, I know I didn't for I had my shoes off when I laid on the bed.

Q. So if it is recorded that you did say that it is an error, is it not?—A. I don't know whether it is recorded or not; I never saw the report of the Citizens' Committee.

Q. If then, it appears that you said that, "That night I came home a little late. I had just pulled off my shoes and coat and laid down on the side of the bed with my pants, socks, and shirt on, reading a newspaper, and sort of dropped off to sleep—" in so far as it relates to your not having taken your shoes off it is a mistake?—A. It is; I reckon it is a mistake.

Q. Did you make that statement to Mr. Purdy and Major Blocksom under oath?—A. The statement that I laid down on the side of the bed with my shoes, coat, and hat removed, reading a newspaper, that is the statement I made to Mr. Blocksom and Mr. Purdy.

Q. So, when you said in the other examination "So I laid awake, never pulled off my shoes; when the first firing started I jumped up," that is the same, eh?—A. That is a mistake. I was certainly asleep when the first firing was done.

Q. Tell this court which is correct; were you asleep or were you awake?—A. I was asleep when the first firing was done; that's what roused me.

Q. You stood on the corner of the alley between Elizabeth and Washington streets in Fifteenth street at some stage of that proceeding when the firing was going on, I think you said.—A. I was there before and afterwards.

Q. Did you state there was a light on the gate or not?—A. If there was any light on the gate I have no recollection of seeing it; no, sir. You mean the barracks gate? If there was a light on the barracks gate, I don't remember seeing it.

Q. How long was it you say after you waked up until you got to this station there on the corner of Fifteenth street and the alley?—A. Perhaps a couple of minutes or three from the time I left the house; two or three minutes. I went there just as quick as I could walk; you see the distance on the map and know how long it would take a man to walk that.

Q. Could you see inside the garrison from where you stood?—A. Yes, sir.

Q. Could you see the barracks distinctly?—A. Yes; I could if I looked; could see the barracks distinctly, yes.

Q. Did you say anything about any men jumping over the wall while you were there?—A. No; I saw no men jump over the wall.

Q. You could have seen them if they had jumped over the wall, anywhere near the alley, I mean?—A. If I had been looking in the direction at that time, yes, I could have seen them.

Q. As a matter of fact did you not state to this court yesterday that you were looking in that direction?—A. Of the barracks?

Q. Yes, or in the direction of the wall.—A. No; I looked in the direction of the barracks for the simple reason that I saw a shot from the upper gallery of the barracks, and that attracted my attention. When I turned my head again down Fifteenth street why then's where I saw the men assemble at the foot of Elizabeth street.

Q. I will ask you if at any time while you stood there or moved back about half way up—you said you moved yesterday—whether at any time during that proceeding any men jumped over that wall?—A. No, sir; I did not see anybody.

Q. You are positive they did not?—A. I am positive I did not see none.

Q. Would it have been possible for any man to have jumped over that wall near the little spot marked as the rear, and you not see them during the time you stood there?—A. I don't think it was possible where I stood for men to scale the wall without me seeing them, for my attention was attracted there where I stood at that corner to about there the letter B is on that barracks, and if there had been anybody go over the wall I would have been pretty near sure to see them.

Q. Were there any men in that direction during the time you stood there?—A. No; I did not see any.

Q. If any men had been right where the letter B on the picture is, could you have seen them?—A. From where I stood looking over the barrack wall I might have seen from their head up, or shoulders, may be—I don't know how high the wall is; some 4 or 5 feet—I had to look over it, and if I had seen anybody I could only have seen their head or shoulder.

Q. Do you remember there is such a place as that little outhouse there, used as a toilet by the company? (Indicates on map.)—A. Yes.

Q. Any other house or shed of a similar nature between that and the gate?—A. I don't remember whether there is or not.

Q. I will ask you is it possible, assuming that map to be correct, for you to look down toward the big gate there without actually taking in that wall practically that whole distance?—A. I don't understand.

Q. Do you believe it possible that you could have been looking down that alley Fifteenth street, from the corner of the alley and Fifteenth street, toward the big gate, watching intently, as you must have been—is it possible, I say, for you to have been looking that way without having seen the whole wall itself or anything that occurred on the wall?—A. I don't think it possible. I think if anything occurred on the wall I would have seen it.

Q. Then, if any men did go over there during that time, you certainly would have seen it?—A. I think I would. I feel satisfied I would have seen them.

Q. You are very sure there is no other outhouse of any kind from the one pointed out there—the toilet of that B Company—and the gate. You are sure of that?—A. I pass along there very often; if there is one there I don't recall it.

Q. Never made any impression on your mind?—A. Never made any impression on my mind. There might be others, but I have no recollection. I know there is one farther down. Yes; somewheres along there, somewheres (indicating on map).

Q. I understood you to say you could not see that barracks?—A. I could certainly have seen it if I had been looking that way.

Q. Weren't you looking that way?—A. I was.

Q. Did you see it?—A. I did.

Q. When?—A. At the time I arrived at the corner of the alley and Fifteenth street.

Q. How far was it from where you stood to that barracks?—A. I don't know what the distance is.

Q. What is the color of it?—A It is a kind of a lead color. A dark-blue color or something like that, as well as I remember. I think that is about the color of the barracks.

Q. Could you see the porticoes, upper and lower?—A. I don't remember to have noticed close enough to remember whether I could recognize the porticoes above and below or not. I don't remember whether I looked close enough——

Q. Tell the court now whether you could or not.—A. I think I could have recognized if I looked in that direction, which I did look in that direction, but don't remember whether I recognized the porticoes or not.

Q. What is the width of the alley—30 or 36 feet?—A. I have no idea what the width of the alley is. I would have to guess at the width. I expect that alley is about 20 feet wide, may be 25 feet, 20 to 25 feet.

Q. What I want you to tell me is how wide is Fifteenth street?—A. Oh, I do not know. While it calls to my mind it may be 30 feet. I do not know what the width of it is, but it recalls to my mind I would say it is about 30 feet wide, just guessing, looking up and down the street often, and it calls to my mind it might be 30 feet wide.

Q. You having walked up and down there frequently, would you say that distance from the side of Fifteenth street toward the barracks—would that distance over to the barracks be as much as 60 feet? From the wall to the barracks?—A. As much as 60 feet from the wall to the barracks?

Q. Yes, sir.—A. I expect that it is about 60 feet, more or less; I don't know.

Q. Then the distance in a direct line from where you were to the barracks would be in the vicinity of 90 to 100 feet?—A. Yes; it must be.

Q. What kind of a night was it?—A. To my recollection it was a starlit night.

Q. Was it a dark starlight or bright?—A. I don't think it was very bright nor I don't think it was a very dark night; don't remember.

Q. How far could you recognize people that night?—A. I guess I could recognize anybody that night 100 to 150 feet.

Q. Did you recognize anybody while you stood there?—A. Yes, sir.

A. Who?—A. I recognized a bunch of men at the corner of Elizabeth and Fifteenth streets.

Q. And how far is that, Mr. McDonnel?—A. I do not know.

Q. Give us your best judgment.—A. I don't know what the length of the block is, what the distance.

Q. Give the court an idea.—A. Perhaps 100 feet. Yes; from the alley to the corner there, perhaps 100 feet.

Q. To what extent did you recognize them?—A. I recognized those men as being negroes in United States uniform.

Q. Could you recognize their clothes?—A. Yes.

Q. What was their clothing?—A. All that I paid any attention to or noticed had on—oh, pants the color of the uniform you wear, drab, I believe they call it, and blue shirts.

Q. What kind of blue?—A. Well, I think they were what is called in the army regulations as blue chambray shirts.

Q. What else did they have on?—A. In the way of clothing?

Q. Yes.—A. That is all I remember to have noticed, the color of the pants—the trousers—and the shirts.

Q. Did you notice whether they were armed or not?—A. Yes, sir; they had guns.

Q. All of them?—A. They could have been one or two parties that did not have guns, but the majority had guns.

Q. Did they wear hats or caps?—A. All that I could recognize or notice had hats on—regulation army hats.

Q. Then if it is recorded that you said to the Citizens' Committee, "I don't know whether they were negroes or white men," you made a mistake?—A. Most assuredly. It must be a clerical error in whoever taken down the testimony, if I said so.

Q. But your recollection of it, as I understand you, was very acute the next day, of what you saw?—A. I might have been a little off the next day.

Q. Was your evidence at that time, that you were 30 or 40 steps from them, correct?—A. Well, there is the streets and the alley to show for themselves. I might have guessed at it and called it 30 or 40 steps; I don't know whether I did or not. There are the positions I was in—there's the map.

Q. As a matter of fact do you remember very well what you testified then, Mr. McDonnel?—A. Before the Citizens' Committee?

Q. Yes.—A. I have not very much recollection of what I did say, no. I don't remember but very little what I did say before the Citizens' Committee.

Q. Mr. McDonnel, when did you get these facts so firmly fixed in your mind?—A. Oh, immediately, I guess, in a few days.

Q. Well, how long before or after you testified to the Citizens' Committee was it that you got them so firmly fixed in your mind?—A. Well, I am not in shape to say; I don't know.

Q. You testified, I believe, that you saw a shot from the gallery; which barracks was it?—A. As it shows on the map, barracks B.

Q. Did you see the man when he fired the shot?—A. No; I only saw the flash from the gun and heard the report.

Q. Don't you consider that very important evidence?—A. I do not know how to consider it.

Q. Did you tell the Citizens' Committee that you saw any shot from the gallery?—A. I don't know whether I did or not. I don't know whether I was asked the question or not.

Q. Did you?—A. I don't remember whether I did or not.

Q. When did you get that fixed in your mind, Mr. McDonnel?—A. Which?

Q. The fact that you saw a shot up in that gallery.—A. At the time.

Q. And yet you neglected to tell the committee the next day?—A. I don't know whether I did or not; I don't remember whether they asked me or not.

Q. How long was it from the time you saw these men assemble in front of the gate at Elizabeth street until they reached the alley where you were standing?—A. Perhaps a minute or a minute and a half.

Q. You hugged the fence and ran up to keep away from them?—A. I did not run, I moved in slowly.

Q. Did you stand in the open so they could see you?—A. No; I throwed my body up to the fence and kind of walked sideways.

Q. Sidled along?—A. Yes, sir.

Q. How far did you go?—A. I don't remember; I can't say; perhaps halfway to Washington street and perhaps not so far.

Q. Then, how long was it before you came back to the corner of the alley again?—A. It couldn't have been more than half a minute—just as quick as they turned into the alley I walked down to the mouth of the alley.

Q. You didn't sidle back down?—A. No, sir; I walked.

Q. I think you said you saw them shoot into the house of Mr. Cowen on the corner of Fourteenth street and the alley?—A. I believe I said so, but I changed that; I did not recognize them shooting into the house. I recognized them shooting in the immediate vicinity of Mr. Cowen's house.

Q. How far was it from where you stood to Mr. Cowen's house?—A. I don't know how far it is.

Q. Any light in the alley?—A. I did not see any. I did not see any artificial light.

Q. Was that distance greater from the corner of the alley where you stood to the Cowen house than from that same corner where you stood down to the barracks gate?—A. I suppose the distance is about the same, nearly the same, about the same.

Q. You had no trouble recognizing the uniform of the men down there?—A. I did not recognize the uniforms of the men. I have no recollection of having recognized the uniforms of the men doing the shooting after they got near the Cowen residence.

Q. Was there any light in the Cowen house?—A. I don't remember to have seen any.

Q. I think you testified in your direct examination that you distinguished the forms of the men when they were firing down close to the Cowen house.—A. Oh, yes; most assuredly I saw the forms of men; yes.

Q. Then did you testify as follows before Mr. Purdy: "Could you distinguish any forms or outlines of men there" (meaning at the Cowen house). Answer: "If I could distinguish the forms or outlines of men I don't remember it. I saw the shooting there at the Cowen house and reasonably supposed it was the squad of men who had turned up the alley?"—A. That ain't the way it seemed I gave it to him. I think I told him I could distinguish the forms of men and saw the flash of guns. I think I said I could distinguish the forms of men and could not recognize them and saw the flash of guns.

Q. If, then, it is so recorded it is erroneous?—A. Yes; I think it is a mistake of some kind. I must have overlooked that. I read the evidence and thought I had it down correct; I may have overlooked that in reading it after it was put into typewrite.

Q. You then read over the evidence deliberately after it was transcribed, and signed it?—A. I read over it but did not read it carefully.

Q. Are you in the habit of giving evidence in that manner, Mr. McDonnel?—A. I have not been called upon very often in my life to give evidence. Very few times I have been in court of any kind.

Q. I wish you would describe to the court again just what shooting you heard, giving it with intervals of time between each, as near as you can now recall it.

By the judge-advocate:

Unless there is some special purpose for all this, I don't see the necessity for this duplication; it is taking up the time and encumbering the record.

By the counsel:

I believe it is elementary that when a man testifies to something on direct examination he can be approached on that particular thing from any standpoint that the cross-examination sees fit to ask him.

By the judge-advocate:

I grant you that, sir.

By the counsel:

If that is the case, I don't see what the objection is. My question, as it was formulated, has not been answered, and I appeal to the record. (Question reread.) I submit that that question has not at any time been answered by this witness.

By the judge-advocate:

I don't know the purpose of that word "again" being inserted in the question.

By the counsel:

Do I understand there is an objection to that question?

By the judge-advocate:

I make that an objection and would like to have the court rule upon it.

By the counsel:

I would like to understand the objection. I would like to have the judge-advocate state his objection. If my English is bad I will gladly correct that.

By the judge-advocate:

It is not on that account at all. If that question is to bring out something already answered I object to it, and the word "again" there has deceived me, and perhaps is intended to deceive other people.

By the counsel:

I am willing to strike out the word "again" if that will remove the objection.

By the judge-advocate:

I would like to have read what this witness said before on this subject.

By the counsel:

Do I understand this is objected to because it is a repetition?

By the judge-advocate:

Not only this particular question, but a great many of the questions have been asked and answered and asked and answered.

By the counsel:

I think that is the privilege of cross-examination; that you can make a witness answer a question many times, especially if he is a hostile witness.

By the judge-advocate:

I think there is no appearance of hostility.

By the counsel:

That is for the court to judge; we have our own opinion about it.

Record of witness's testimony on this point was read to the court. (Direct examination, p. 102 [53].)

By the judge-advocate:

I do not care to have closed court if the court will instruct the counsel to avoid duplication as much as possible. I do not care to attempt to hamper his examination in any way—or cross-examination—but I am anxious to save time, and time is very important to us, as you all know.

By the counsel:

The defense is hardly in accord with the idea of saving time in this manner. If the judge-advocate had listened more acutely to the form of our question he would have saved ten or fifteen minutes on this objection. I am living up strictly in good faith with the instructions the court has already given me in that matter.

By the judge-advocate:

I would like to have a ruling on that question, if the court please.

By associate counsel:

I would like to answer that objection. As I understand it, the judge-advocate objects to the question on the ground that it has been asked before. The defense submits that that question has been asked before; it has been asked a number of times. The answer to that question, as well as to other questions that have been put to the witness now on the stand, have revealed discrepancies which it has been the purpose of the cross-examination to reveal to the court, and if to expedite this testimony, or any other testimony, the judge-advocate desires the defense to allow the examination of the witness to close with statements made on direct examination, he prevents us making use of the privilege of cross-examination, whose purpose is to reveal the truth by breaking down this direct examination if it is contradicted by any previous evidence that this witness has submitted under oath in any previous examination. Those discrepancies are startling. I believe it is our privilege, and I believe it is the desire of the court to have those discrepancies appear before it if they are material, and they are.

The court then, in open session, ruled that the question be answered by the witness.

(Question was repeated to witness.)

A. Upon that night I was roused by some shots being fired. I got up, put on my shoes and hat, and proceeded down Elizabeth street until I entered Fifteenth street. I went down Fifteenth street until I was near the alley between Washington and Elizabeth streets. I heard 2 or 3 shots fired, or flashes from the shots; I recognized the flashes from guns, and heard the reports; they seemed to be almost immediately between barracks D and B, and at the same time I saw the flash of a gun and heard the report, or heard the report and saw the flash of a gun, from the upper gallery or near the upper gallery of barracks B; I can't say whether it was fired off the gallery or out of the window. The next firing was when I saw those men turn up that alley, and I walked back to the mouth of the alley and saw them firing in the immediate vicinity of the Cowen residence. Saw no more shots fired; heard quite a number afterwards.

Q. How long from the time the first shot was fired till you heard the next one? I am talking about the shots in which you saw the flashes; how long from the time that shot was fired until you saw others?—A. From the time I saw 2 or 3 shots fired between barracks B and D until I saw the others? Is that the question?

Q. Yes.—A. Almost simultaneously; the shot from the barracks was a little behind the other, but almost at the same time; there was only a short interval between them.

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Q. Yes.—A. Almost simultaneously; the shot from the barracks was a little behind the other, but almost at the same time; there was only a short interval between them.

Q. When were those 3 shots fired with respect to the time you first heard the alarm? How long after you heard that alarm was it?—A. I had time enough to get up and put on my shoes and hat and walk from the middle of the block I live to Fifteenth street.

Q. Put it in time, will you, as near as you can recall it?—A. It could not have been more than three minutes, I don't think. I guess it at three minutes; it would take me about that time to get there.

Q. How much interval of time was there between these 3 shots?—A. I hardly know how to measure the time.

Q. Give the court an idea?—A. The 2 first; there were 2 I know, but there might have been 3 on the ground; they were fired almost simultaneously, and the other followed almost simultaneously—right immediately.

Q. Almost as fast as they could be fired; is that what I understand you to say?—A. Yes; about that; they was not exactly fired at the same instant, but about that; right about together.

Q. You didn't see anything except the flash of those shots at that time?—A. Those shots I saw inside the post? I saw nothing but the flash of the guns.

Q. Didn't give you light enough to see the barracks?—A. I mean to say I did not see men or guns, but could see the outline of the barracks and things; yes, sir.

Q. Why didn't you tell that committee about that the next day?—A. I don't suppose they asked me. If it is not on record that's the reason; they didn't ask me.

Q. Were they not trying to get all the information they could? Wasn't that your understanding?—A. I think so; I think that was the intention.

Q. About how many shots were in that alarm that woke you up?—A. I don't know, 3 or 4 or 5; there might have been more. Somewheres in the neighborhood of 3 to 5 shots that alarmed me; might have been more.

Q. How long from the time you heard those flashes was it until you saw the men in the front of Elizabeth street gate?—A. Perhaps half a minute—immediately. That was the next thing that attracted my attention, as I remember.

Q. Did you see them actually come out of the gate?—A. No, sir; I did not.

Q. And you are certain they did not come over the wall?—A. I didn't see them come over the wall. Oh, no; I do not say they did not come over the wall, I say I did not see them.

Q. Was there any firing from the time you saw them at the gate on Elizabeth street until you saw them next firing down at Mr. Cowen's house?—A. I have no recollection of any other shots being fired in that interval.

Q. Did you hear any language, or any words spoken by these men?—A. Yes; there were some words spoken, but they were spoken in a low tone and I could not distinguish what they were. I heard two or three words spoken in a low tone, as men would naturally speak in a low tone, and you could hear it but could not distinguish what the words were they spoke to each other.

Q. All of them talking?—A. Oh, no; I did not hear but two or three words.

Q. Just describe from a layman's view point what those wounds looked like.—A. There was a bullet wound; it entered one side and came out the other side, in the position my thumbs are in my body.

Q. Were these small holes or large holes?—A. Very small holes.

Q. In cross-examination you made a remark that you were a little off the following day, after this occurrence; will you tell the court what you mean by being a little off?—A. I meant to convey the impression this way. That a man going through what a man went through that night, the excitement and one thing and another, his mind might not be clear the next day or maybe the day following. That's what I meant to impress.

Q. You stated in your cross-examination just now you came from your home and turned, as I understood you, from Elizabeth into Fifteenth—— A. Oh, no; I turned from Adams into Fifteenth.

Q. If you said "Elizabeth" it was merely a slip of the tongue?—A. Why, certainly.

EXAMINATION BY THE COURT.

Q. You stated on cross-examination that you did not suppose they were negro soldiers who uttered these two or three indistinct words; who did you believe they were?—A. I stated that I did not suppose they were negro soldiers. But I didn't *suppose* they were negro soldiers, I felt confident in my own mind that they were negro soldiers. That's what I meant to convey, that I didn't feel any doubt in my own mind that they were negro soldiers.

Q. In your testimony describing your movements before you saw the men go down the alley toward Fourteenth street you stated as you were "proceeding down the alley;" please state what alley you meant. Explain.—A. I don't remember I ever said I proceeded down any alley; I said I proceeded down Fifteenth street until the alley between Elizabeth and Washington streets.

Q. About how many men did you see at the corner of Elizabeth and Fifteenth streets?—A. About 20.

Q. About how many men went each way?—A. I think they were very equally divided. I think they were evenly divided.

The court then took a recess until 2 o'clock p. m., at which hour the members of the court, the accused, his counsels, the reporter, and the judge-advocates resumed their seats.

The judge-advocate here addressed the court as follows:

I would like to state for the information of the court, before proceeding with the next witness, that the man who occupied this house marked No. 9 on the plat, on the night of August 13, 1906, by name Mr. José Martinez, is now living in the Republic of Mexico, and is unwilling to leave a newly-established business in Neuva Laredo, and, being beyond the jurisdiction of any United States court, he could not be subpœnaed. He said he was willing to appear in the town of Laredo and give his deposition. The accused declined to consent to the latter expedient on account of the importance of this case and probable materiality of evidence to which witness might depose. Laredo being within the geographical limits of the State in which court is sitting, the provisions of the ninety-first article of war do not apply.

Mrs. KATE E. LEAHY, a witness for the prosecution, was duly sworn, and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Will you please state your name, residence, and your occupation.—A. Kate E. Leahy. Brownsville, Tex.; hotel keeper.

Q. Mrs. Leahy, is your husband living?—A. No, sir.

Q. What was his occupation while he was living?—A. Saloon keeper.

Q. Before that?—A. Soldier.

Q. In what regiment?—A. Eighth Cavalry.

Q. What length of service, do you know?—A. I am not positive, but I believe it was five years, sir.

Q. Mrs. Leahy, will you please point out on that map there on the wall, if you can, the location of your house in Brownsville, Tex. Do you understand maps?—A. Not thoroughly, but a little bit. (Judge-advocate explains map to witness. Witness points out house marked No. 3.)

Q. Where were you on the night of August 13, 1906?—A. Brownsville.

Q. In what building?—A. In the main building, in the building I live in, sir.

Q. The corner of what streets is that?—A. Elizabeth and Fourteenth.

Q. Did anything unusual occur on this night?—A. Shooting.

Q. About what time was this shooting?—A. The first shot was fired 5 minutes to 12.

Q. How do you fix the time in your mind?—A. I just wound my clock, sir.

Q. What else occurred after this shooting, Mrs. Leahy? I want you to state fully, if you please, anything of an unusual nature that occurred upon this night.—A. Yes, sir; there was a whole lot occurred.

Q. Will you kindly tell the court all that occurred that night, as far as you remember?—A. When the first shot was fired I left my bedroom and I went upstairs and looked out of the window to see where the shooting was. As the fifth shot was fired I saw it fired from the balcony of one of the quarters, the second quarters in the post.

Q. Counting from which way?—A. From the river, sir. I counted 9 shots, then 13, then volleys. I came downstairs and told my sister that there was a fire, I presumed, in the post. I walked out on the main street, on Elizabeth street, to see where the fire was, and the bullets flew around me, being shot over the garrison wall.

Q. From what direction?—A. From the post. I went back upstairs to the same window I was in and watched them shooting from the post for about ten minutes. Next thing, I saw that they were shooting in the alley by Cowen's house.

Q. Where is Mr. Cowen's house with reference to your house?—A. Right opposite to the window I was in, sir; on the alley.

Q. Are you perfectly familiar with its general outside appearance—the Cowen house?—A. Certainly, sir.

Q. You have seen it every day for some time, I suppose?—A. Every day for the last two years, sir.

Q. I will ask you what this is, Mrs. Leahy (handing witness photograph)?—A. The Cowen house, sir (hereto appended and marked ——).

Q. Mrs. Leahy, you have had your hotel there for how long?—A. Since the 8th day of February.

Q. Of what year, please?—A. 1905.

Q. You are reasonably familiar with its external appearance, of course?—A. Yes, sir.

Q. Will you kindly tell me what that is (handing witness a photograph)?—A. That happens to be the back part of my house, sir (hereto appended and marked ——).

Q. Now, are you more or less familiar with the views from the various windows of your hotel, or not?—A. Yes, sir.

Q. I will ask you what that is (handing witness photograph)?—A. That is the Cowen house taken from the last window of my house, sir (hereto appended and marked ——).

Q. And will you tell us what that is (handing witness photo)?—A. That's a picture taken from the window I was in (hereto appended and marked ——).

Q. When, Mrs. Leahy?—A. The night of the 13th of August.

Q. Where were you standing when you witnessed this shooting from the gallery of the barracks?—A. In the third window, sir.

Q. From which direction?—A. From the alley.

Q. Will you kindly take that photograph and mark the window in which you stood. (Witness marks with pencil, X, on Exhibit ——.)

Q. Was this your own bedroom?—A. No, sir.

Q. If it was not your bedroom how did you happen to be in it at that time of night?—A. I went up there, sir, to see the shooting.

Q. Was this room occupied?—A. No, sir; it was empty.

Q. What occurred after you went back the second time and stood in the window of this vacant room? In other words, what did you see?—A. I saw them shooting from the gallery, sir. I saw them moving along the balconies, saw the flash of light back and forth on both top and bottom gallery, and the next I saw was the flashes of the guns in the alley by the Cowen house. I could not see them, but I saw the flashes of the guns.

Q. Did you at any subsequent time see any figures whom you could recognize?—A. No, sir; they were in the post. I could not see them when they came up to the side of the Cowen house.

Q. But after that, please state fully what you did see.—A. After I saw the flashes in the alley the soldiers moved to the corner or Cowen house on the alley by a tree. There was a mudhole there——

Q. And what street was that, please?—A. Fourteenth street. They walked around the mudhole—would not walk through it—shot back, looked up and saw us, one man said something, and the other man said, "No, keep straight ahead and shoot to the front." There was three volleys fired in the street, Fourteenth street.

Q. Fired in what direction?—A. The first shots were fired by the

street, by the alley, straight up the alley toward, I presume, I should say, toward Fifteenth street.

Q. Toward the garrison?—A. No, sir; the men's backs was toward the garrison.

Q. Down the alley away from the garrison?—A. Yes, sir; toward, I suppose I should say, Thirteenth street, the street of the Miller Hotel. When the second volley was fired they were standing in the middle of Fourteenth street. I saw distinctly they were colored men—saw them in khaki uniform—some of them had blue shirts on. I could see the blue barrel of the steel of the gun. The guns seemed to me to be about so long, about 2½ feet long. When they got to the street part of them tried to turn up Fourteenth street. From there they turned back, started to the alley, and turned and deliberately shot into the Cowen house.

Q. There had been a lull, then, between the volleys fired into the Cowen house?—A. Yes, sir.

Q. Of how great an interval?—A. I presume a second, probably two seconds; a very short interval, sir. The men were walking deliberately as they crossed that street. Their actions were deliberate.

Q. Did you recognize the voice of anyone about that time?—A. No, sir; I could recognize no voices; all I could recognize was one voice when the man said, "Keep ahead and shoot to the front." That's all the talk I heard.

Q. Was this remark made in English or Spanish?—A. Yes, sir; in English.

Q. Was there anything peculiar about this voice in its characteristics?—A. No, sir; none whatever.

Q. Where were they when they fired the second volley that you spoke of a moment ago?—A. Standing in the middle of Fourteenth street there in the alley, right in the middle of the street.

Q. Where was the nearest artificial light?—A. Lamp-post on my corner, sir—on Elizabeth street.

Q. As far as you know, what occurred after this?—A. Nothing but the shooting up the street, sir.

Q. Up what street?—A. Up the alley, as far as my knowledge.

Q. Did the men continue up the alley?—A. Yes, sir.

Q. And how about the sounds of the shots; did they remain stationary or proceed further?—A. No, sir; they were proceeding.

Q. For how long a time, to the best of your recollection?—A. I presume, sir, about ten minutes.

Q. Was the shooting continuous, scattered, or was it in volleys?—A. No, sir; they were shooting scattered; there would be a few shots fired and then a sort of an interval and then a few more fired. It lasted about ten minutes, the shooting did, after they left my house, when I saw about half dozen men going back to the post.

Q. How many men did you see returning toward the post, Mrs. Leahy?—A. Six.

Q. How were these men dressed?—A. I could not tell, sir.

Q. What route did they take in returning to the post?—A. The same route they came, sir; down the alley.

Q. Back of the alley?—A. Back toward the post from the alley; came right down the alley again.

Q. But you didn't see how they were dressed?—A. No, sir.

Q. Didn't recognize them?—A. No, sir.

Q. Now, I will ask, Mrs. Leahy, if any police officers came to your house that night?—A. I can't say, sir; they came to my house, but during the shooting in the post—no, they did not come to my house; they were passing my house and asked where the fire was. I told them there was no fire—the soldiers were shooting up the town. Put them inside of my house and hid them.

Q. For how long a time did they remain thus hidden?—A. About two hours, sir.

Q. Who released them?—A. My sister and Judge Parks.

Q. Did you see a patrol or any body of soldiers passing your house after the firing was all over? If so, please tell about it.—A. Yes, sir. Just about half an hour afterwards I saw a company of soldiers; I presume there were about 30 or 40 men—I doubt if there were any more—pass the house. One made a remark, as he was passing by, that he would clear the town out of every so and so white man before the next day.

Q. How long a time elapsed from the time you heard or saw the first shots until you saw these men returning in the direction of the barracks?—A. Which men, sir?

Q. The men you spoke of a moment ago; the half dozen men returning toward the barracks?—A. Thirty minutes.

Q. About thirty minutes?—A. No; positive thirty minutes.

Q. Did you hear any bugle call?—A. Yes, sir.

Q. When did this sound, with reference to the time of the passing of these half dozen men toward the post?—A. About eight minutes, sir; before the soldiers went into the post. The soldiers were in the town when that bugle was blown.

Q. At what speed were those half dozen men going toward the post?—A. They were running.

Q. Slowly or rapidly?—A. Rapidly, sir; in an upright position.

Q. Now, when you saw those men passing down the alley for the first time, at the time you testified you saw shooting, at what speed were they going, or in what position?—A. They were almost walking; they were in a crouching position—shooting position—crouching.

Q. A moment ago you made the remark, "so and so white men." Was that the actual words they used, or was it blasphemous or obscene language they used?—A. It was obscene language, sir.

Q. How long have you lived in Brownsville, Mrs. Leahy?—A. All my past life, sir.

Q. Were you born there?—A. No, sir; I was born in Matamoros, Mexico.

Q. Are you pretty familiar with the appearance of the various streets and alleys of that town?—A. Part of them.

Q. Are you familiar with the portion of the town near which is situated your hotel?—A. Yes, sir.

Q. Can you tell by looking at this what it is (handing witness a photograph)?—A. The garrison wall, sir, or street between the garrison wall and the town.

Q. Look at that again and tell where it was taken from, if you can.—A. It looks to me like it was taken right back, or opposite to Yturria's house. (Not submitted in evidence.)

Q. Will you tell the court, please, Mrs. Leahy, what you did the remainder of the evening. Briefly; I don't want every little detail.—A. After I saw the soldiers passing?

Q. Yes.—A. You mean the troops that went back to the post?

Q. After the disturbance was apparently over.—A. Sat around and talked to the balance of the people in the house and then took a lunch and laid down and went to sleep, sir.

Q. Did you leave your house for any purpose?—A. Yes, sir.

Q. Will you please tell the court for what purpose?—A. I left the house during the shooting in the alley. Mrs. Cowen called to me to go over and take care of her and her family, and brought them to my house, sir.

Q. Were shots being fired into the house at this time?—A. No, sir; they had just stopped it.

Q. Was there firing in the town at this time?—A. They were firing probably half way up our alley.

Q. These same people or others?—A. The same people, I presume; I did not see them.

Q. When you went to the assistance of the Cowen family, these half dozen men had not passed up the alley toward the post; not yet?—A. No, sir; they were going up toward the Miller Hotel.

Q. These first men that you saw passing down the so-called Cowen alley from the direction of the post to the town, you are positive that they were in uniform?—A. Yes, sir.

Q. Will you enlarge a little upon that and tell just what you saw with reference to their uniform or anything else?—A. I saw them stop at the tree on the street at the Cowen house. I saw them shoot. They stopped in the middle of the street. I saw them shoot a second time. There were 16 men, sir.

Q. Did you count them?—A. Yes, sir. The flashes of the guns and the shooting was so vivid, so clear, so distinct, that there was no making a mistake in their color or the clothes they wore.

Q. And the color was what?—A. Khaki uniform, and some had on a blue shirt.

Q. And the color of the faces was what?—A. Black.

Q. Did they have anything in their hands?—A. Guns.

CROSS-EXAMINATION.

QUESTIONS BY THE ACCUSED.

Q. How old are you, Mrs. Leahy?—A. I was born December 12, 1868.

Q. And that would make you how old?—A. Thirty-eight.

Q. When were you married to Mr. Leahy?—A. June 5, 1886.

Q. Was he a soldier at that time?—A. No, sir.

Q. Do you know whether or not he belonged to the Eighth Cavalry?—A. Yes, sir.

Q. How do you know that?—A. I have his discharge papers, sir; I am not positive, but I know he belonged to Captain Randlett's company. Captain Randlett at that time belonged to the Eighth Cavalry.

Q. He was a saloon keeper when he married you; was he?—A. Yes, sir.

Q. And what were you doing?—A. Nothing.

Q. Where were you living?—A. Brownsville.

Q. How many rooms in your house, Mrs. Leahy?—A. In the main house, sir? In the house I live in?

Q. Answer it in any way you see fit.—A. I have two houses, sir, and I am asking you if you mean the house I live in.

Q. The house you have been testifying to before the court.—A. That's the one I live in. There's 10 rooms in the main house. My room and some old rooms on the outside, outbuilding.

Q. How many upstairs and how many downstairs?—A. There's 3 upstairs.

Q. The balance, or 7, are downstairs?—A. Yes, sir.

Q. Who occupied the upstairs rooms at that time?—A. One room, Judge Parks; the room facing next to the alley, Herbert Elkins.

Q. Then the room you were in was the one furthest from the alley?—A. Yes, sir.

Q. And it faced in what direction?—A. Post.

Q. What room were you in before you went up to that room?—A. My own, sir.

Q. And where is that?—A. Downstairs in the yard.

Q. Could you show us on the plat about where that was, or could you?—A. No, sir, but I could explain it to you which I think would be better. I am not familiar with that map.

Q. All right.—A. It's right opposite. There is a courtyard and it is on the opposite side to the room where I was in, right across the yard, sir.

Q. Would the courtyard be toward the alley or toward Washington street or toward Elizabeth street.?—A. The courtyard, sir, would be toward the Miller Hotel.

Q. Do I understand that your house occupies all that green space over there (indicating on map)?—A. I think so.

Q. Then there is a shed that shuts off the court from the alley?—A. It is a wood shed. I put the policemen in there, inside, in that room on the alley, a wood shed and bathroom.

Q. As I understand it, there is a greenhouse runs down there; is that the one the picture was taken of and introduced?—A. Yes, sir.

Q. There is a part of it evidently running parallel with Elizabeth street. (Indicates.) A part of the house in green, directly on Fourteenth street; that seems to be an addition to the other part; is that true?—A. Do you mean the 2-story house? The 2-story house is all one house; there is only the top added to the bottom.

Q. There is a part, if you will look at the map where the pointer is, running parallel to Fourteenth street, according to the plat, which indicates that it joins onto a part running parallel to and some distance to Elizabeth street.—A. This house runs from here to the alley almost; that is one house.

Q. All built at the same time?—A. That's more than I can tell; but the back part has two stories where the front part is only one story, and I presume that there was put on a second time.

Q. The plat indicates there are two separate additions.—A. That I don't know, sir. This here, these rooms are above the kitchen part of the house.

Q. How wide was Fourteenth street right opposite your window?—A. About 50 feet.

Q. And how far would you say it was from the east side, or the

garrison side of Fourteenth street over to Fifteenth street, through that block there; how far is that?—A. About 150 feet, sir.

Q. And then the alley is about 30 feet—I mean Fifteenth street—about 30 to 36 feet wide?—A. I don't know, but I don't think it is quite as wide as Fourteenth street.

Q. And how far is it would you say—if you will just look at the plat—from the garrison wall over to the barracks?—A. I presume, sir, it is about 100 feet.

Q. So that, adding up the distance, we have 40 feet and 150 feet is 190 and 30 is 220 and 100 is 320 feet from your window to the barracks on an air line there?—A. I presume, sir.

Q. Or something over 100 yards?—A. I presume so.

Q. Any light around there that you know of? Street lights?—A. Right on my corner. Two lights on the garrison gate, but I could not see them. I could see no light, excepting the one on my corner.

Q. Did you see the effect of any other light at all?—A. Excepting what was on the barracks, on the porches; men carrying lanterns.

Q. There were men carrying lanterns?—A. Yes, sir; upstairs and downstairs, and I could see them going upstairs on the back part of the second quarters.

Q. How many lanterns did you see there?—A. More than I can tell; I did not count them.

Q. Give us an idea; your best recollection.—A. I can not, sir; because I did not count them, and I saw the lights moving back and forth for fifteen or twenty minutes.

Q. Was it by the light of these lanterns that you recognized the soldiers shooting?—A. No, sir; it was not.

Q. How did you recognize the soldiers?—A. By the flash of their guns while they did the shooting.

Q. Didn't have to hold a lantern then for you to see them?—A. No, indeed.

Q. Could you see the color of their faces all right?—A. Yes, sir.

Q. You had no doubt about it, then, that they were colored men or negroes?—A. No, sir; they were negroes.

Q. That is when you made up your mind positively, from the actual sight of them by means of the flashes of the guns, that they were negroes?—A. Yes, sir.

Q. What kind of a night was it? Dark night or starlight night or moon shine?—A. It was a starlight night, too dark for me to recognize they were negroes only by the flash of the gun, which was like a flash of lightning.

Q. How many guns were there?—A. I counted 16 men, sir, and each man had a gun.

Q. That was where?—A. On Fourteenth street between the Cowen house and my house.

Q. Let's go back to the barracks. I want to know how many guns you saw when the volleys were fired from the barracks?—A. Didn't count them.

Q. Give us your best judgment.—A. No, sir. I am no judge of volleys.

Q. What is a volley?—A. When I say a volley I mean a dozen or two different guns, sir; probably more; something that I could not count.

Q. We can safely say from your statement that there must have been at least two dozen?—A. At the very least, sir.

Q. How many volleys did you see them fire from that upper gallery?—A. I did not count, sir.

Q. Give us your best judgment.—A. I can not, sir, for I did not count them.

Q. Did you keep a record of anything that occurred that night?—A. No, sir; nothing but the time.

Q. Where did you record that?—A. On my clock, sir, and in my memory.

Q. In the tablet of your memory, eh?—A. Yes, sir.

Q. That's good. When this flash of these volleys occurred could you distinguish anything except the color of these negroes?—A. You mean the flashes from the balconies?

Q. Yes.—A. No, sir; they were too far from me to see they were soldiers on that balcony, sir.

Q. Oh, I misunderstood you, then. How long did that keep up, that firing on the balconies?—A. I presume about ten minutes.

Q. How many volleys did they fire in that time?—A. More than I care to remember, or more than I can tell you.

Q. Approximate it.—A. No, sir. If you would ask me I would say I presume I felt like you would feel on the battlefield, sir. I am doubtful whether you could keep count of them then, sir, and I a woman and not used to it, much less.

Q. I would like to know about how bright a light it made. What could you see, besides the men—anything at all?—A. I could see the quarters; I could see some chairs on the galleries from the light of the lanterns they moved around with.

Q. I want you to give the court an idea of how bright, how much illumination there was from these volleys you saw fired during this ten minutes you were watching it over on the porch.—A. I could not tell you; I did not pay any attention to how much light was given. The shots were attracting my attention and the bullets hitting the houses.

Q. The bullets were hitting the houses at that time?—A. Yes, sir.

Q. Which direction were they shooting at the time they fired these volleys?—A. Shooting the direction of the town.

Q. Did you hear any of them strike some place?—A. I did, sir.

Q. Where?—A. I don't know; I heard them hitting lumber.

Q. Smell the powder?—A. No, sir.

Q. Were not close enough for that?—A. I don't know how close they were, but I know I did not smell any powder.

Q. Did you at any time that night smell powder?—A. No, sir; I was not near enough any of them to smell powder. I did not want to be, either.

Q. But you stood at that window all this time?—A. No, sir; I did not. After I heard the first 9, then 13 shots, and heard some volleys, I went downstairs and told my sister to keep my little baby and one of the Cowen children in the house, and walked out on Elizabeth street.

Q. That was while these volleys were still being fired there on the balcony?—A. Those shots that flew around me were not shot from the balconies of that barracks; they were shot over the garrison wall between two quarters.

Q. I want you to keep your mind on those volleys. I want to know whether or not you remained at that window upstairs during the ten minutes that you said you saw volleys being fired from the upper gallery of that second barracks. That's what I want to know.—A. Yes, sir; I did.

Q. You remained there that whole ten minutes?—A. Yes, sir.

Q. Was the window open?—A. Yes, sir.

Q. Were you standing up or sitting down, or what were you doing?—A. I was leaning out of it, sir.

Q. Any bullets strike your house at that time?—A. Not that I know of.

Q. Do you know that any of those shots at that time struck anywhere near you?—A. No, sir; I could not swear to that.

Q. Well, now, how long after this ten minutes shooting of volleys on the balcony was it until you saw some shooting down between the barracks and the garrison wall?—A. I saw no shooting between the barracks and the garrison wall.

Q. I understood you to say you heard some there then.—A. I heard some.

Q. How much, please?—A. I don't know, sir.

Q. About how long did that shooting last?—A. A few seconds, a few minutes.

Q. Could you put it into minutes?—A. No, sir; I could not.

Q. I thought you were noting the time very carefully that night.—A. I know the shooting lasted one-half hour from the time it commenced until it stopped.

Q. You are very positive of that?—A. Positive.

Q. You would not be willing to say about that time? You are positive it was thirty minutes?—A. No, sir; I am positive it was thirty minutes.

Q. Coming back to that firing between the barracks and the garrison wall, could you give us any idea—were those in volleys, or how were they delivered?—A. I could not tell you, sir, for I never saw them, and I could not say they shot between the barracks and the garrison wall. I just heard shooting.

Q. You are satisfied it was the same parties doing that shooting?—A. I am satisfied it was.

Q. Be pretty dangerous for anybody to be in Fifteenth street about this time?—A. Yes, sir.

Q. Any of those shots strike houses that you know of?—A. No, sir; not that I know of.

Q. How long after that firing between the barracks and the garrison wall was it until you heard some firing in the alley, I think it was you said?—A. Yes, sir. Immediately.

Q. Give us an idea how long it took between that firing and the other. Approximate.—A. Well, it just simply kept shooting off and on all the time. They didn't seem to stop only for a second, two seconds, and then started again, sir.

Q. How big was this mudhole you spoke of?—A. Two or three feet across.

Q. Both ways?—A. I did not measure it; I am just guessing.

Q. Was the water deep in it—or mud deep in it—at all?—A. About to your shoe tops.

Q. And at this place these 16 men fired two volleys?—A. Let me tell you. They shot before that into the Cowen house, when they got to the Cowen house and the alley. I did not see them shooting inside the house, because I did not realize the United States troops would deliberately shoot into a citizen's house. I only saw the flash of the guns.

Q. Then, when you said a while ago they were shooting from the United States barracks, you were mistaken?—A. No, sir.

Q. Had you not begun to realize in this ten or fifteen minutes of wonderful volley firing that something serious was happening?—A. Why, certainly, when the bullets flew around me in the street, sir.

Q. Then did you know they were soldiers or not?—A. No, sir; I presumed they were, because the shots came from the garrison off their barracks and I knew they were not letting anybody else go in there and shoot off their barracks. They would make sharp work of them if they did.

Q. Why do you think they would make sharp work of them?—A. If you knew soldiers—Oh, excuse me—I was going to say if you knew soldiers as well as I did, you would not ask me that question.

Q. I don't. Soldiers and women are beyond my ken.—A. Evidently. You only know the better side of them.

Q. I am glad I have rubbed up against only that side. By the way, have you still a saloon in your establishment? Any saloon in it at all?—A. No, sir.

Q. Just a hotel?—A. Yes, sir.

Q. Now, where were they—coming back to your testimony—where were they when they fired these shots into Mrs. Cowen's house?—A. The first shots that was fired in the alley I could only see the flashes of the guns. The second shots up the street that I saw them shooting when I recognized they were negroes and in uniform of the United States, or in khaki uniform—they were in the middle of Fourteenth street and just as they got to the alley is when I saw them deliberately turn and shoot into the Cowen house from the front.

Q. How close were they to the Cowen house?—A. I presume about 50 feet, sir.

Q. What were you doing?—A. I was looking out the window at them. Deliberately looked at them and they deliberately shot in there.

Q. Leaning out the window?—A. Yes, sir.

Q. About how far did you project beyond the window?—A. From my waist out; I was looking; I wanted to see it all.

Q. Were you fully dressed?—A. No, sir; I had my gown on and bedroom slippers and a skirt.

Q. Did you wear a dark skirt or a light skirt?—A. A white skirt.

Q. So you were a symphony in white?—A. Yes, sir.

Q. Did you have any fear that you might become a target by projecting out the window at the time?—A. Soldiers were not hunting me or my place, sir.

Q. Then, there was no reason why they should exhibit any animus toward you?—A. No, sir; none whatever.

Q. You certainly had none toward them?—A. No, sir; none whatever.

Q. Very fond of the colored soldiers?—A. I know nothing at all about colored people. We have always, when the colored troops have

been in Brownsville previous to that; they have never given me any cause in any way, shape or form whatever, to fear them, none whatever.

(At request of counsel, witness' testimony on page 142 [73] of record, second question from end of page, down to and including first question and answer, page 143 [74], were read.)

Q. Do I understand from that testimony that has just been read, that you entertained yourself counting the shots, you discovered the fifth was from the balcony, then you counted 9, then 13, then volleys, and after that you still presumed there was a fire in the garrison?—A. Oh, no.

Q. Then when you so testified on the direct examination, you were mistaken, were you?—A. Now, wait. I said when I went upstairs I counted 9 shots, 13, then a volley fired, then I walked out on the street and there the volleys were firing from the garrison wall and the bullets flew around me. I presumed they were firing on the town and there was no fire in the post.

Q. When did you change your mind from the fact that there was no fire in the post to the fact that it was a fusilade?—A. Oh, when the bullets flew around me.

Q. Up to the time you went downstairs you were under the impression it was a fire in the garrison?—A. Yes, sir.

Q. And it was not until you got out on Elizabeth street and saw bullets——? A. I did not see them; I heard them.

Q. Then when you said that in your direct testimony you were mistaken, were you?—A. That I said I saw the bullets? I never saw any; I heard them, sir; they flew around me.

(At request of counsel, testimony top of page 143 [73] was read to witness.)

Q. You saw the bullets striking around you, then?—A. No, sir.

Q. How did you know they were striking around you?—A. I didn't say they were striking around me, sir; they flew around me, because I could hear them whizzing by me.

Q. How long did you stay on Elizabeth street there?—A. About two minutes.

Q. What were you doing during that two minutes?—A. Looking over toward the garrison to see where the shooting was coming from.

Q. Did you see?—A. Yes, sir; I saw the flash of the guns over the garrison wall.

Q. Over the garrison wall?—A. Yes, sir.

Q. Now, I will ask you to go to the map again if you will. Will you show where you were standing? Let me ask you first, is that right across where the light is in the street?—A. Yes, sir.

Q. Where were you standing with respect to that light?—A. I was standing right there. (Indicates the further side of her own house, down Elizabeth street from the garrison.)

Q. You stayed there two minutes?—A. Yes, sir.

Q. And as I understood you to say you saw firing down in the garrison?—A. Yes, sir.

Q. This was after the men came down from the balcony? The firing had ceased there?—A. No, sir; why, before it; after the first shots were fired, sir, was when I went out on the street. Then I went back upstairs, and then was when I saw all the firing from the balconies.

Q. I frankly confess you have me confused.—A. Well, you have not me. As long as I live that will be in my mind as clear as can be.

Q. Point out to us, Mrs. Leahy, as near as you can, where that was—that firing.—A. I was standing right there—just here, if I read this map rightly. This is a courtyard and this a small door that comes into my courtyard, and I came out there between this yard and the commission house next door and walked onto Elizabeth street.

Q. Why did you go that back way?—A. It was not a back way; it was a front way. My alley gate was locked and there was only one way for me to get out from my room. My room is down there and I walked down there. That is never locked; that is left open for the guests of the house to come in and out at their leisure and at their pleasure.

Q. You see where the garrison gate is there, and that's the road you see running in there. Here's the Rio Grande River (indicating on map for witness). Show the court as near as you can where those men were standing when they were firing during the two minutes you stood on Elizabeth street.—A. They were firing right here in front of the gate, and right on the left-hand side of the gate as you go in.

Q. About how many men were firing there?—A. I could not tell you; I could not see them; could simply see some men with guns; could not tell who they were.

Q. Could you see they had guns?—A. Certainly, when I saw the flash of the fire from them.

Q. Understand me, we are talking about the firing you saw standing over there on Elizabeth street. That's after you had come down stairs and gone on the street, and what we want is the firing you actually saw by the garrison gate.—A. Yes, sir; I saw it.

Q. Are there two gates there?—A. There is a small gate, but it was not over the small gate I saw it; it was over the large gate.

Q. Could you see what direction they pointed their guns?—A. Yes, sir.

Q. Were they coming down Elizabeth street?—A. Yes, sir.

The court at this point took a recess until 3.40 o'clock p. m., at which hour the members of the court, the accused, his counsels, the witness, the reporter, and the judge-advocates resumed their seats.

Q. Could you see the direction in which these men who were firing just inside the barracks gate were pointing their guns?—A. They were pointing them in the direction which I was standing at—Elizabeth street.

Q. All of them were shooting through the gateway?—A. No, sir; they were shooting over the wall.

Q. On both sides?—A. I did not see but one side.

Q. Which side was it you noted it on?—A. On this side, sir.

Q. On the left hand as you face toward the garrison?—A. Yes, sir.

Q. That's on the same side then as the small——A. Gate.

Q. How high is that wall between the two gates, Mrs. Leahy?—A. The wall between the two gates, sir, I don't know; but it was not the shooting I saw was over a wall about 3 or 4 feet high.

Q. That was to the left of the big gate?—A. On this side, on the left of the big gate.

Q. And, as I understand it, you mean as you were facing toward the garrison?—A. Yes, sir.

Q. Do you recognize that picture (showing witness picture already introduced and appended as Exhibit —)?—A. Yes, sir.

Q. What is it?—A. It is the garrison gate, sir.

Q. What direction is that looking from? What's this here?—A. That's the telegraph office, and I was standing right out here in the middle of the street.

Q. The only difference is, you were further down Elizabeth street, were you not? You were a block and a half further down?—A. Oh, no, sir; it's not more than a little over half a block, sir.

Q. From Fifteenth street to Fourteenth street, and then you pointed out you were about where the letter T or E is.—A. Yes, sir; but that block is only a little over half a block, not a full block from the post, and my street—Fourteenth street—is only about half a block.

Q. Now you stayed there for two minutes while this firing was going on?—A. Yes, sir.

Q. Then where did you go?—A. Back upstairs, sir.

Q. Where to?—A. The window I was in at the beginning.

Q. Who was there at that window at that time?—A. No one but myself.

Q. Anybody else in that part of the house upstairs?—A. Yes, sir. I hollered to Mr. Parks and to Mr. Elkins that the negroes were shooting up the town, and they both stepped to their windows and looked out.

Q. When you hollered this way, what time was it with respect to the commencement of the shooting?—A. I have not the slightest idea.

Q. It was after you came down on Elizabeth street and went back up?—A. Yes, sir.

Q. Did either of them come to your window at any time?—A. No, sir; they were each in their own rooms.

Q. Did you remain at this window from that time on?—A. Yes, sir.

Q. By the way, were you in the same costume when you went out in the street that you were in at the window?—A. Yes, sir.

Q. When you went back up from Elizabeth street to that second-story window how long did you remain there then?—A. I remained then until the shooting was over, excepting when I went after the Cowens and after the policemen in the yard, and that was while the shooting was going on.

Q. This is the second trip?—A. I went downstairs. I went up first and came down on the street and then went back, if you call that the second trip.

Q. And this had consumed approximately how much time?—A. From the time I first went upstairs, sir?

Q. Yes.—A. I presume about twelve minutes.

Q. Where were the men then?—A. When I went up the second time?

Q. The men who were shooting.—A. Just in the post. If they were not inside the post they were right outside the post, but it seemed to me the shooting was still coming from the direction of the post, so I presumed they were still in the post.

Q. How did you get up there, run or walk?—A. I ran up.

Q. You were not frightened at all?—A. No, sir.

Q. Were you at all excited?—A. Not at all.

Q. You were accustomed to being under fire, then?—A. No, sir; but I don't know what the word fear means.

Q. Then how long was it after this twelve minutes before you saw the men shoot into the Cowen house?—A. Almost immediately.

Q. Would you say it was a minute or two minutes or what would you call it?—A. Oh, yes; it must have been two or three minutes.

Q. They fired a volley into the house before they got to where the alley crosses Fifteenth street, or at the mudhole, did they not?—A. Yes, sir.

Q. You saw that?—A. I saw the flash of the guns, but I could not see the men themselves; I could just see the flash of the guns.

Q. And about how far were they from the Cowen house at that time?—A. They were inside the alley, and I could just barely see a flash of light; I could not tell you how far they were in the alley.

Q. And they moved slowly down, and did they fire the second volley you spoke of at the mudhole; did they fire this down into the house, or did they fire this into the street?—A. I said they walked around the mudhole; the mudhole was right at the corner. They fired the first one at the mudhole, the second in the middle of the street, the third was by the corner almost; then is when I saw them deliberately shoot into the Cowen house.

Q. Now, what volley were they firing when you recognized this glitter of the blue steel?—A. The middle of the street, sir.

Q. Right around the mudhole? Had they crossed the mudhole at that time?—A. Yes, sir.

Q. So that they were on the town side of the mudhole when you saw these steel guns?—A. The mudhole was in the street on the town side; this was between the Cowen house and my house; that was in the town already.

Q. I mean it was not in the garrison?—A. No, sir; it was right on my side, and the mudhole was on the town side, right at the corner.

Q. Could you distinguish the color of the steel from the color of the other part of these guns?—A. Yes, sir; I could see the blue barrel of the gun very distinctly; only one, and it seemed to be about that long. (Indicates with hands about two feet.)

Q. You only recognized one of these; you only recognized the blue steel of one of them?—A. Yes, sir; only of one.

Q. What kind of a man had hold of that one?—A. It seemed to me, sir, they were in a crouching position; I could not tell you how tall they were, but he was not a very black man; his face seemed to have some kind of spots on it; he was sort of yellow.

Q. You could see the spots on his face?—A. I could see something; I could not say whether they were spots, but they looked like to me to be spots. I believe if I had seen them next day I could have picked that man out of the balance.

Q. Did you see his profile or his full face?—A. I saw his full face, sir, for he looked up toward the window where we were sitting.

Q. Could you determine whether he had any moustache or beard?—A. No, sir; he had no moustache or beard; his face was clean shaven.

Q. And he was in at that time, he was in—whereabouts?—A. The middle of the street; right in the middle of Fourteenth street.

Q. Whereabouts?—A. In the middle of the street, sir.

Q. Will you show us on the map?—A. (Indicates on map.)

Q. Then he was at the junction of the alley between Elizabeth and Washington streets on Fourteenth street?—A. Yes, sir.

Q. And will you point out the mudhole there, so we can get that located?—A. The street's about 4 feet wide, probably a little wider than 4 feet; the street is about 5 feet wide, and right at the entrance of the street there is a tree and the mudhole is right in the middle. (Indicates on map.)

Q. Was this mudhole so small a man could jump over it?—A. No, sir.

Q. Had to go around it?—A. Yes, sir.

Q. Was he on the same side or the other side of the mudhole as yourself, this man with the spots on his face?—A. He was next to me; the mudhole was back between him and the Cowen house. They were in this position (crouching position).

Q. Did they point the guns up?—A. When I saw them they were shooting straight up the alley.

Q. But they were pointing up a little when they shot into the Cowen house, were they not?—A. Yes, sir; but that was the next time they shot.

Q. Is this where you indicated the mudhole?—A. Stepping right off the sidewalk onto the street was the mudhole.

Q. And the tree?—A. Right on the edge of the street, and the mudhole was right at the foot of that tree. Just a little pathway about the width of one of these tables at the foot of the Cowen fence, and this tree, as you come up the alley; there is a little pathway, and that tree stood on the corner of the front of their house and this alley.

Q. Is that that he points to Cowen's house?—A. Yes, sir. (No. 2 on the map.)

Q. There is a fence around the Cowen house?—A. Yes, sir.

Q. Where were these men when they fired into the Cowen house? As I understood you, they were in the alley toward the garrison and, as you look at the map, on the right-hand side of Fourteenth street?—A. No, sir; they were right next to my house, sir, in the alley, but not inside the alley; more toward where I could have seen them, not in the middle, more toward the corner. Just about there. That's when I saw them shoot deliberately into the house.

Q. They turned around, faced about?—A. Yes, sir.

Q. And deliberately fired into the Cowen house?—A. Yes, sir; that's where I saw them.

Q. And at the same time did you recognize this man with spots?—A. No, sir; when they were shooting in the middle of the street.

Q. Did you see him shoot into the Cowen house?—A. No, sir; I could not see him shoot into the Cowen house; I could see them but not their faces. I could not recognize their faces then.

Q. Will you go to the map and put your finger on the place where this man with the spots was when you recognized him with the spots on his face?

(Witness here indicated directly in the center of the crossing of Fourteenth street and Cowen alley.)

Q. Then it was after that that you saw them turn and fire into——

A. Yes, sir; they were standing, when I saw them turn and deliberately fire into the Cowen house, just about there.

Q. As I understand you, you could not recognize anybody at that distance when they fired into the Cowen house?—A. I could recognize them, but I could not see their faces; I could only see part of their side faces at that time.

Q. But you could not tell whether they had spots on their faces or not?—A. I could not see their faces distinctly enough at that time to see. It was only this one man I saw distinctly.

Q. Was there any artificial light there?—A. I saw them by the flashes of the guns.

Q. It was the flash of his gun or some other gun?—A. They fired all together, and I don't know. I don't think they were all shooting at the time, but there must have been 8 or 10 of them shot.

Q. He was the nearest man to you, was he?—A. No, sir; he was right in the middle.

Q. Tell the court what there was about him that made him so conspicuous you could pick him out of this company.—A. I happened, I presume, to be looking right at the man at the flash of the gun; he happened to have his face turned toward the window where I was sitting.

Q. This is the same man that had the blue-barreled gun? I see I have made a note here that when you first saw the shooting you stated you saw the men on the balcony walking back and forth.—A. I did, sir.

Q. At the same time you saw the shooting?—A. I did not see men going back and forth when the shooting was going on.

Q. The shooting on the balcony, eh?—A. Off the balcony; yes, sir.

Q. Where were these men when you heard the talking?—A. When I heard what talking? I did not testify to any talking, excepting them saying, "Keep ahead and shoot to the front," when the man was looking up at the window, and I presume at that time he had seen me; he mumbled something, and one said, "Keep ahead and shoot to the front."

Q. Give us the exact language the man used.—A. That's all he said, sir.

Q. Didn't you say you heard a man say, "No, keep ahead and shoot straight to the front?"—A. No. "Keep ahead and shoot straight to the front." That's all the remark that was made, sir.

Q. Then he did say, "Shoot straight to the front"?—A. Yes, sir.

Q. Could you locate them when they shot those three volleys toward Miller Hotel?—A. There was two volleys shot toward Miller Hotel; the third shot was fired into the Cowen house. I have located them on the map—one next to the Cowen house, one in the middle of the street, and one right next to my side of the alley. That's the one I saw shot into the Cowen house.

Q. Did any of these men going down Cowen alley come down Fourteenth street when they cut to the crossing of Fourteenth street and Cowen alley?—A. When they got to my side of the alley after shooting into the Cowen house they made two or three steps up Fourteenth street, then turned back and went on up the Miller Hotel alley toward the Miller Hotel.

Q. You could not identify any of these men?—A. No, sir.

Q. Could not see any spots on their faces?—A. No, sir; I could not.

Q. They were a little closer to you than before?—A. They were, sir.

Q. And must have been looking directly toward you?—A. No, sir; they were not near me; I was above them.

Q. Were you not above them when you did recognize the spots on his face?—A. Yes, sir; but the man turned and looked up; his face was in such a position I could see him.

Q. Well, then they went on down the alley?—A. Yes, sir.

Q. And how many more volleys did you hear?—A. I did not keep track of the shots after that, sir.

Q. More or less, give us an idea.—A. I have not the slightest idea; it may have been 50 and it may have been 75.

Q. It may have been 50 and it may have been 75 shots after they quit firing into the Cowen house and went on down the alley toward Thirteenth street?—A. Yes, sir.

Q. Would you be any more accurate than 50 shots?—A. No, sir; I could not count them; never thought of counting them.

Q. How many shots all together were fired that night?—A. There must have been at least 300 shots fired, sir; it sounded a whole lot more to me.

Q. How many would you say?—A. I would say nothing less than 300; nothing less.

Q. Did you ever testify on that point before?—A. I gave Mr. Purdy some testimony.

Q. What did you tell him?—A. I don't remember, sir.

Q. Might you have told him you heard a good many more than that?—A. No; I doubt that I told him I heard any more than 300 or less than 500.

Q. Then if it is recorded you heard 500 it is a mistake?—A. No, sir; I would not say it is a mistake, because I told him I heard nothing less than 300 to 500.

Q. Then it might have been less than 500?—A. Yes, sir; and it might have been more.

Q. Now, from the time they left the alley—Cowen alley and Fourteenth street—until you saw those six men come back, how much time elapsed?—A. I don't know, sir; a few minutes.

Q. Give us your recollection.—A. It might have been eight or ten minutes, not more.

Q. So that this figures up, according to your evidence, as I calculate it, considerable more than twenty minutes, between twenty-five and thirty minutes from the time you heard the first shot until you saw these men running back?—A. Yes, sir, thirty minutes exactly.

Q. Did you hear a bugle call?—A. I did, sir.

Q. When did that go?—A. I heard it about six or eight minutes previous to these half dozen men I saw going back to the post.

Q. Did you look to the barracks then to see what was going on?—A. I was still in the window. I saw forms moving up there; they had lights; there was no shooting from the post, the shooting was up town.

Q. Did you hear any roll calls?—A. I did, sir.

Q. You heard rolls being called some six or eight minutes before these men went back?—A. Yes, sir; I heard a call, I don't know what it was, I am not familiar with the calls. I could distinctly hear two voices calling, one hollered to the men to stop firing and the other said "Cease shooting."

Q. When was that?—A. During the firing in the post.

Q. That was early in the firing?—A. Yes, sir; before they came up town at all, sir.

Q. What happened when you heard the bugle sounded?—A. I don't know, sir.

Q. Could you see in the post then?—A. Yes, sir.

Q. What did you see?—A. Nothing but men moving there on the galleries; that's all.

Q. Both galleries—the upper and the lower?—A. Yes, sir.

Q. And you were still standing up at this window?—A. Yes, sir.

Q. Three hundred and twenty feet away, I believe, you said?—A. Yes, sir.

Q. How were these men moving; hurrying back and forth?—A. Yes, sir; and going up and down the stairs. There seemed to be a staircase in the back part leading from one gallery to the other, and I could see them go a few steps up and then nothing more until they came out at the top. It seemed this staircase was closed off, if I remember rightly. I think the staircase was closed. I could see them go two or three steps up and then come out on the top.

Q. Didn't you go at the same window at that or any time with Mr. Parks and Mr. Elkins?—A. No, sir; I was never in their room, sir. The stairway is between my room and Parks's.

Q. Neither of these gentlemen knew anything about your movements?—A. No, sir; none at all.

Q. Have any conversation with either of them?—A. Nothing more than what I have told you that I said to them, that the negroes were shooting up the town, and they hollered to me not to go and get the Cowens when I went over there.

Q. When you saw this company of thirty or forty coming back, an officer with them, I think you testified one of them made use of some language. I want to know the exact language.

To which a member of the court objected as follows:

The witness has testified that that language is obscene, and I don't think she ought to repeat it.

By counsel:

I would like to ask the witness if it is so obscene she could not use it?

A. It is language I am not in the habit of using, and I don't care to repeat it in a company of gentlemen. One of the other witnesses heard it, and will no doubt tell you the remark that was made.

Q. Have you ever testified to this before?—A. General Purdy—I believe he is General—Mr. Purdy.

Q. Did you testify before the Citizens' Committee?—A. I did not, sir; they did not have me.

Q. Why not?—A. I don't know.

Q. Did you offer to testify?—A. No, sir; I did not.

Q. Did you ever express yourself about it?—A. In which way, sir?

Q. Your feelings that you had not been permitted to testify?—A. No, sir.

Q. You are sure of that?—A. I am sure I never said I cared to testify before the committee. The committee did not call on me, and I did not care to testify before them.

Q. Did you ever discuss this with anybody?—A. Yes, sir.

Q. With whom?—A. Almost every stranger that came inside my door.

Q. Did you discuss it with any people in Brownsville?—A. Yes, sir.

Q. Most of them?—A. I could not tell you who they were, because I run a public hotel and have a large number of boarders, and the general subject of conversation was the shooting of the town. Ask me who I did not tell it to and I may be able to tell you.

Q. Then there is no question but what you discussed it with practically all the people of Brownsville?—A. I could not tell you, sir, because Mr. Parks and Mr. Elkins were in their window, and it was a general conversation for at least ten or twelve days. You heard of nothing else.

Q. Have you discussed it recently?—A. It is almost a daily occurrence.

Q. Have you discussed it with the other witnesses since you have been here?—A. Not to amount to anything.

Q. Have you talked?—A. A few lines, or a few words we may have said, but not to give any details at all, sir.

Q. Will you tell us what witnesses you did discuss it with since you have been here?—A. I have not discussed it; just in general conversation with other witnesses; that is, in the courtyard or in the town; general talk outside, that's all.

Q. You have talked it over pretty generally?—A. I don't know if you would call that pretty generally, for I never went into any details.

Q. But you have gone into details previously?—A. Not with the witnesses.

Q. You are sure?—A. I am positive.

Q. Not in Brownsville during the past eight or ten months?—A. No, sir.

Q. Not with Mr. Parks and Mr. Elkins?—A. No, sir.

Q. Why did you refrain from discussing it with the witnesses so scrupulously?—A. There was no necessity of it; they saw what I saw. It was with strangers, because it was a general question with strangers, and they have been many, from Mexico to Canada, and from San Francisco to New York, and it is the only question and the first one they ask you.

REDIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Mrs. Leahy, you said your husband, as I understood you, served five years in the Regular Army; is that the total length of his service, as far as you know?—A. Yes, sir.

Q. You also stated, I believe, that you noted by the clock that thirty minutes of time had elapsed from the beginning to the end of this firing?—A. Yes, sir.

Q. Will you kindly tell the court whether or not you noted this time from the same clock?—A. When the shooting commenced it was five minutes to 12.

Q. From what clock did you get that time?—A. My bedroom clock, sir.

Q. And when it was over, what time was it?—A. Twenty-five min-

utes past 12 by the clock upstairs. I came downstairs and went to my room and looked at the clock again and found it was just thirty minutes past 12.

Q. Were your relations with the garrison pleasant or otherwise?—A. Perfectly pleasant, sir.

Q. Never had any trouble with the officers or soldiers?—A. None whatever.

Q. I think you made the remark that soldiers were not hunting for you that night?—A. I did, sir.

Q. How could you be sure of that?—A. Because I heard the remark said when that man, I thought I recognized, looked up to the window and saw us and mumbled something, and he said, "Keep ahead and shoot straight to the front." I presumed he meant not to shoot at my window, because there was a light behind me and he could see me—half of my body was out the window and I was looking deliberately at him.

Q. Were you given any opportunity to pick out the man next day, who had spots on his face?—A. No, sir.

Q. Did he say anything at that time when he looked toward you?—A. Nothing at all but a mumble of voices; you could just hear mumble something, nothing distinct.

Q. You also said you heard a bugle call and heard a roll call?—A. I did, sir.

Q. In your opinion, is a bugle call the same as a roll call or different?—A. No, sir.

Q. Is there any custom in Brownsville to fire alarm shots in time of public danger?—A. Only during fire, to my knowledge. It is the fire signal of Brownsville and the post both.

Q. And after these six men that you testified to passed your house going toward the garrison, were there any shots fired?—A. I did not hear any.

RECROSS-EXAMINATION.

Q. Did you ever report to anyone in authority that you could identify this man with spots on his face?—A. I did not, sir.

Q. I understood you to say this window you were looking out of was a vacant room?—A. It was, sir.

Q. What kind of a light did you have in it?—A. I had a lantern back of me.

Q. Where did you get it?—A. At the foot of the stairs.

Q. Always keep a lantern at the foot of the stairs?—A. Keep two; one at the back part of the courtyard and one at the foot of the stairs, right on the stairs.

Q. It is the first time you ever mentioned that lantern in any testimony?—A. I believe it is, sir; no one asked me if I had a light and I did not give them any answer.

Q. Where did you set it?—A. Upstairs on the table, right close to the bed; right almost close to the window.

EXAMINATION BY THE COURT.

Q. Why were you not able to recognize the returning men when you plainly recognized them during the firing on Fourteenth street?—A. Because it was too dark for me to see them, sir; I only recognized them during the flash of guns.

Q. Please state whether you know positively that your clock was correct or not when you first heard the firing?—A. My clock was correct, sir; railroad time.

Q. State what street is known as Cowen alley?—A. The alley between Cowen's and Yturria's house. That's the only way I can explain it; it is between Washington and Elizabeth streets.

Q. How did you happen to count exactly the 9 shots and then the 13 shots?—A. Because it is customary for us to do those things. I heard the shots and there were just 9 distinct shots and then 13 distinct shots; and whenever we have had any shooting in Brownsville, whatever, we always count the shots.

RECROSS-EXAMINATION.

QUESTIONS BY THE ACCUSED.

Q. Is it a fact that the garrison of Fort Brown and the town of Brownsville use different times, do you know?—A. I don't know, sir; I don't think so; I think their time is the same since the railroad struck town. My clock is on time on account of the passengers having to leave on the early morning train, and I have to keep a correct time somewhere.

Q. Is that what is called Western Union or Central time?—A. I don't know, sir; we call it railroad time at home.

REEXAMINATION BY THE COURT.

Q. (Question repeated.) How did you happen to count exactly the 9 shots and then the 13 shots?—A. 'Cause we always do it. It is a custom of whenever we have had any shooting in the town at all I have always counted the shots when in my hearing.

The court then took a recess until 4.40 o'clock p. m., at which hour the members of the court, the accused, his counsels, the reporter, and the judge-advocates resumed their seats.

Mr. F. A. H. SANBORN, a witness for the prosecution, was duly sworn, and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please state your name, residence, and occupation.—A. My name is F. A. H. Sanborn, manager of the Western Union Telegraph Company, in Brownsville, Tex.

Q. How long have you lived in Brownsville?—A. Very near thirty years, I don't remember exactly the date I went there, I don't recall it—nearly thirty years.

Q. Will you go to the map over there, which is a map of Fort Brown and Brownsville, and point out your residence and place of business?

(Witness identifies his house as building marked " 1 " on map.)

Q. Have you lived in that house, that you pointed out on the map, long?—A. About a year and a half.

utes past 12 by the clock upstairs. I came downstairs and went to my room and looked at the clock again and found it was just thirty minutes past 12.

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Q. Will you go to the map over there, which is a map of Fort Brown and Brownsville, and point out your residence and place of business?

(Witness identifies his house as building marked " 1 " on map.)

Q. Have you lived in that house, that you pointed out on the map, long?—A. About a year and a half.

Q. Are you thoroughly familiar with the immediate neighborhood of that house?—A. Yes, sir.

Q. Do you recognize what that is (handing witness a photograph)?—A. Yes, sir.

Q. Tell the court, please, what you recognize that as.—A. This represents the entrance to the reservation of Fort Brown—the two company barracks are seen in portion and a scene across the parade ground.

Q. And that place (handing witness another photograph)?—A. This must represent the wall a little below that represented in the other picture, and also the rear of the barracks, showing one other barrack and part of another.

Q. By a little lower you mean toward or away from the river?—A. Away from the river.

(These two pictures were here submitted to the court as evidence and are hereto appended and marked, respectively, —.)

Q. What do you see over that small gate? (On the picture.)—A. I can't make out anything; I lost my glasses on the train and had to get these.

Q. Is there a light over that little gate?—A. No; there is each side of the large gate, but not over the small gate.

Q. Mr. Sanborn, where were you on the night of August 13, 1906?—A. I was sleeping in my room adjoining the telegraph office, as indicated in that room there immediately adjoining the office.

Q. Did anything unusual occur that night? If so, please state to the court what you saw or heard.—A. I think about between 11 and 12 o'clock that night I was wakened from a sound sleep by some heavy firing that seemed very near to me. I got up from my bed—I was sleeping then—and consumed some little time hunting for some matches to light a lamp to see what was going on, and did not succeed in getting one for several minutes. By the time I could have taken any notice of what was going on the firing had ceased and I very shortly afterwards—almost immediately—heard firing some distance away in the direction of an alley near the office.

Q. What is this alley called?—A. I don't really know whether it has a definite name.

Q. Where is it located?—A. It runs parallel to Elizabeth street and just next to it.

Q. Please continue your narrative.—A. About this time I went back into my sleeping room—I had in the meantime lighted the lamp in the office—I went back into my sleeping room, reached over my bed which stood immediately across the window—the window was raised and the shutters were closed—being very warm weather. I opened the shutter of the window and looked out; just as I looked out I saw a colored person wearing the uniform of the United States—the khaki uniform—coming from the direction of this alley; I did not see him until he was midway between my place and the alley, almost opposite my window. He walked along the garrison fence, quite close to the fence, and entered this small gate, and I could see a head over the low wall indistinctly, because it was not a light night. I saw him when he passed the gate distinctly, because there was a light on the gate or a lamp—Government lamp. That is all I saw of the things at all. While the firing was going on there was

Q. Are you familiar with the report made by various classes of firearms?—A. Well, I don't suppose I am an expert, but I think I could tell the difference between different ones.

Q. Can you tell the difference, do you think, between the report of a revolver and a rifle?—A. I think I could.

Q. Were all these reports that you heard that night of the same character?—A. Yes, sir.

The court then, at 5 o'clock p. m., adjourned to meet at 10 o'clock a. m., February 8, 1907.

CHAS. E. HAY, Jr.,
Captain, Acting Judge-Advocate, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., February 8, 1907.

The court met, pursuant to adjournment, at 10.05 o'clock a. m.

Present: All the members of the court and the judge-advocate. The accused, his counsel, and the reporter were also present.

The reading of the previous proceedings was dispensed with by the court.

Mr. F. A. H. SANBORN, a witness for the prosecution, was duly sworn, and testified as follows:

CROSS-EXAMINATION.

QUESTIONS BY THE COUNSEL FOR THE ACCUSED.

Q. How old are you, Mr. Sanborn?—A. I was 61 years old last August.

Q. Are you the official timekeeper of the city of Brownsville?—A. I have charge of the electric clocks that are put in by the Western Union.

Q. Was there such a clock in the garrison of Fort Brown?—A. No, sir.

Q. Did you live in the fort for a long time, Mr. Sanborn?—A. Yes, sir.

Q. Tell the court how long.—A. I lived there at different times, and I really couldn't recall right now how long. I lived there perhaps two years, altogether.

Q. Were you pretty familiar with what was going on in the post?—A. Well, yes, sir; as much as one could be while your duties are assigned to you; and most of the time I was in my room, to sleep there.

Q. Do you know whether the time of Fort Brown is the same as the city of Brownsville?—A. No, sir; I do not.

Q. Do you know whether it was different?—A. No, sir; I do not.

Q. Where did you hear shots that night, Mr. Sanborn?—A. I heard it very near me. Of course, I couldn't locate it, because I didn't look out. There was no way that I could have opened my doors at the time, but it sounded very near to me. I couldn't, of course, locate it.

Q. Approximately?—A. Perhaps five minutes; it could not have been more than that, I don't think.

Q. You saw no other soldiers or other persons enter about this time in any way?—A. No, sir; I saw no others.

Q. Did you hear any rolls called?—A. Yes, sir. I, after that, went into the office and opened a door facing the garrison wall; sat in the door. I saw, I suppose, the officers—I could not identify them—come across the parade and go into the quarters, call out the men and call the roll.

Q. Did you hear the result of this roll call?—A. Yes, sir; as near as I could distinguish every man answered to his name.

Q. Could you tell whether or not there was any personal inspection by the officers, company officers, of their companies?—A. No, sir; I could not.

Q. To the best of your belief then the roll was simply called and the men were allowed to answer "Here?"—A. That seemed to be the way of calling the roll.

Q. Was it fairly dark between the garrison wall and the barracks?—A. Well, yes; it was rather a dark night. I could not see, in fact, from my place, I could not see the soldiers formed there really, I only heard them.

Q. You were in the lower floor of your building, as I understand it?—A. Yes, sir.

Q. Would the gate or the wall or anything else tend to obscure your view?—A. No, sir; it is an iron gate, you could see through the iron bars.

Q. Just about the time of this first firing you have spoken about, either immediately before or a short time after, did you hear any footsteps passing your home?—A. No, sir.

Q. Did I understand you to say you were awake or asleep about this time?—A. I was sound asleep, wakened from my sleep by the first firing; I heard nothing before that.

Q. About how long before this had you retired?—A. Perhaps one hour and a half.

Q. Do you remember about what time this was?—A. I do not think I noted the exact time, but my impression was it was between 11 and 12 o'clock, nearer 12.

Q. As far as you know, was your house fired into on this occasion?—A. No, sir; not that I know of.

Q. By your house I mean the entire building.—A. I was shown the next day where a bullet had been fired through the upper story of the building, but at that time—that night—I knew nothing about it.

Q. You spoke of other firing after the first firing which you heard, in the vicinity of your house, did the firing seem to remain stationary or progress in any direction?—A. I don't think I observed that, I merely heard the firing and did not pay much attention, except that it was a great deal farther away than the first firing.

Q. Was the first firing very close to you?—A. Yes, sir.

Q. What made you think that?—A. Well, judging from the sound of the report.

Q. Are you in any way familiar with firearms?—A. Well, not very.

Q. Are you familiar with the report made by various classes of firearms?—A. Well, I don't suppose I am an expert, but I think I could tell the difference between different ones.

Q. Can you tell the difference, do you think, between the report of a revolver and a rifle?—A. I think I could.

Q. Were all these reports that you heard that night of the same character?—A. Yes, sir.

The court then, at 5 o'clock p. m., adjourned to meet at 10 o'clock a. m., February 8, 1907.

CHAS. E. HAY, Jr.,
Captain, Acting Judge-Advocate, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., February 8, 1907.

The court met, pursuant to adjournment, at 10.05 o'clock a. m.

Present: All the members of the court and the judge-advocate. The accused, his counsel, and the reporter were also present.

The reading of the previous proceedings was dispensed with by the court.

Mr. F. A. H. SANBORN, a witness for the prosecution, was duly sworn, and testified as follows:

CROSS-EXAMINATION.

QUESTIONS BY THE COUNSEL FOR THE ACCUSED.

Q. How old are you, Mr. Sanborn?—A. I was 61 years old last August.

Q. Are you the official timekeeper of the city of Brownsville?—A. I have charge of the electric clocks that are put in by the Western Union.

Q. Was there such a clock in the garrison of Fort Brown?—A. No, sir.

Q. Did you live in the fort for a long time, Mr. Sanborn?—A. Yes, sir.

Q. Tell the court how long.—A. I lived there at different times, and I really couldn't recall right now how long. I lived there perhaps two years, altogether.

Q. Were you pretty familiar with what was going on in the post?—A. Well, yes, sir; as much as one could be while your duties are assigned to you; and most of the time I was in my room, to sleep there.

Q. Do you know whether the time of Fort Brown is the same as the city of Brownsville?—A. No, sir; I do not.

Q. Do you know whether it was different?—A. No, sir; I do not.

Q. Where did you hear shots that night, Mr. Sanborn?—A. I heard it very near me. Of course, I couldn't locate it, because I didn't look out. There was no way that I could have opened my doors at the time, but it sounded very near to me. I couldn't, of course, locate it.

Q. You said, in your direct testimony, that it was in the alley, between Elizabeth and Washington streets.—A. I think I said that I heard shots in that direction.

Q. What interval of time was there between the two shots that you heard?—A. Approximately ten minutes.

Q. Describe the firing in each case and the impression it made on you at the time.—A. The first firing took place so near me and so much of it, of course, waking me from a sound sleep, confusing me very much; and I was at an entire loss to know what it could mean, and I was rather "rattled," and didn't really know what to do. Afterwards, when I heard the firing further away, I don't know whether it was the same party or some others, but it sounded further away. I couldn't then locate it.

Q. How long did you remain in this state that you describe as being "rattled?"—A. Probably five or ten minutes, until I collected my thoughts.

Q. Where were you when you pulled yourself together and collected your thoughts?—A. I was in my room.

Q. Where?—A. Adjoining the telegraph office, as I have located it on the map.

Q. Were you in bed?—A. I was in bed when the firing awakened me.

Q. I want to know where you were when you pulled yourself together and got collected.—A. I was walking around my room.

Q. Was that when you were looking for the match that you spoke of, to strike a light?—A. Yes, sir.

Q. Well, did you get collected before you got this light, or afterwards?—A. I was fairly myself, I think, in a few minutes after I got out of my bed.

Q. You didn't see anybody but this poor, lone soldier that you saw go in the gate?—A. No one else.

Q. And how long was that after the first firing that rattled you?—A. Well, I should say it was about five or eight minutes. I, of course, can not remember the time very well, but I say approximately.

Q. And how long before the bugle call?—A. It must have been twenty minutes, I think, from the time I first heard the firing.

Q. I think you said you saw some officers coming across the parade.—A. I shouldn't have stated that they were officers, because I couldn't identify them, but it appeared to me that it was, because they came from the direction of the officers' quarters.

Q. Did they have anything in their hands?—A. Some one had lanterns.

Q. Are you sure about that?—A. I think so.

Q. How many lanterns?—A. I really didn't count them.

Q. Give your best recollection.—A. Perhaps two or three.

Q. Where were they, exactly?—A. When I saw them, they were near the barracks, the soldiers' quarters.

Q. Were they toward the parade ground, or toward the wall, from the barracks?—A. They were on the walk, between the two barracks.

Q. Between the two barracks?—A. Yes, sir.

Q. Where were these men that you said yesterday were officers, and that now you are uncertain about it? Where were they when you saw them?—A. They were right there where I described where the lanterns were.

Q. Between the barracks?—A. Yes, sir; as near as I can remember.

Q. How long was this after the firing first commenced? The firing that rattled you I mean.—A. I should say it was twenty minutes, approximately.

Q. How long was this before you heard this roll call that you described yesterday?—A. Probably five minutes afterwards—after the twenty minutes or twenty-five minutes probably.

Q. Is that the roll call you heard twenty-five minutes or so after the first firing?—A. Yes, sir; approximately.

Q. Might that roll call have been between the barracks, next to the river, and the wall?—A. Possibly, yes, sir.

Q. What is your best judgment on that?—A. Well, from the fact that I heard the sound of the voices, and all, I should say it was, at least—it was on the side of the barracks between the wall and the barracks, or near there.

Q. You couldn't say exactly?—A. No, sir; not exactly.

Q. The only thing you could do was to hear it?—A. I heard it—that was all.

Q. How many of these officers did you see?—A. I couldn't tell how many there were.

Q. Give us your best judgment, Mr. Sanborn.—A. I really couldn't say—there was a group there—of course. I saw them very indistinctly—it was dark—there were a group of persons bearing lanterns.

Q. And this was about twenty-five minutes, as I understood you, after the firing commenced?—A. I should think about that; yes, sir.

Q. You were pretty well collected in your thoughts the next morning, were you not, Mr. Sanborn?—A. Yes, sir.

Q. The events were very well fixed in your mind by that time, were they not?—A. Yes, sir.

Q. All the details of it?—A. Yes, sir.

Q. Did you have any conversation with anybody about it the next morning?—A. I did. I asked Captain Macklin, who was at the wall of the reservation, and I really knew nothing in the world of what had taken place, and stepped over and asked him about it.

Q. Tell the court what you told Captain Macklin.—A. I really don't remember anything, except that I asked him what had taken place.

Q. Did Captain Macklin ask you what had taken place?—A. No, sir.

Q. Sure about that?—A. He did not.

Q. Is it not a fact that Captain Macklin did ask you what had taken place, about 8 o'clock the next morning, when you were talking to him over the wall gate?—A: I don't recall anything.

Q. Is it not a fact that Captain Macklin asked you the next morning what took place?—A. No, sir; because I had no knowledge of it.

Q. Did you not tell Captain Macklin at the time that you thought it was a fire, and that you subsequently thought it was a row, and that you did not take the trouble to get out of bed at all?—A. No, sir.

Q. Are you sure that you did not say that?—A. Quite sure.

The judge-advocate here stated that he had no further questions to ask the witness.

EXAMINATION BY THE COURT.

Q. Was this man that you saw returning to the barracks armed?—A. Yes, sir.

Q. Please go to the map and point out the spot where you first saw the group of men whom you supposed to be officers.

The witness here stated that he could locate the spot better from the photograph which was introduced in evidence the day before.

The witness then stated that on the wall map the spot was between the two barracks, the barracks on either side of the gate, but that he could not locate it on the wall map on account of the darkness of the night, there not being much light.

The judge-advocate here stated that this spot, the barracks spoken of, were designated on the wall map as "B"–"D."

The witness was then handed a photograph, which was in evidence and is hereto appended and marked thus: ▽. The witness held the photograph in his hand and the examination was continued, as follows:

Q. I would like to know if that is a photograph of the barracks represented on the wall map as B–D?—A. Yes, sir; apparently.

Q. Is the gate between barracks B–D?—A. Yes, sir. (The witness here indicated the spot in question on the photograph by drawing the letter "X" on the walk, and continued:) This is where they had evidently halted or stopped. I noticed them first, when I first looked, before they had quite reached that place, and I presumed that they were going across the parade. I really couldn't say what direction they were going, but I saw them immediately before they stopped there, and approximately that is where I saw them. Of course, it was dark, and I could only locate them from their lanterns—some one or two lanterns.

QUESTIONS BY THE COUNSEL FOR THE ACCUSED.

Q. Where were these men when you first observed them, Mr. Sanborn?—A. They were very near the point which I have indicated where they stopped. I couldn't say from what direction they came, but apparently, to me, they came from across the parade. Of course it was dark, and I couldn't locate them exactly.

Q. What did this lone soldier have in the way of arms when you saw him?—A. A piece of some kind—a gun.

Q. What kind of a gun?—A. I couldn't say.

Q. Do you know whether it was a gun or not?—I couldn't swear if it was a gun or not—might have been a stick.

Q. Might have been a club?—A. It might have been—at that distance—but it had the appearance of a rifle.

Q. Describe it so that the court and all may know—what was the manner of his carrying it? Describe that.—A. I saw him just before he went through the gate—he was looking down at his right hand—it was resting on the stock of the piece, as though he was doing something with that hand. I didn't see him distinctly at that time, and I couldn't tell what he was doing.

Q. I want you to tell this court everything that you saw of that thing that you have described as a gun, and everything that led you to believe it was a gun and not a club.—A. Well, there doesn't seem

to be much to say about it. It had all the appearance of a gun to me.

Q. Tell us what the appearance was.—A. It looked very much like a gun.

Q. Wherein?—A. From the shape and its length.

Q. What was its length?—A. I didn't have an opportunity to measure it, sir.

Q. Give us your judgment.—A. An ordinary piece used by the soldiers.

Q. Tell us what variety—we use a great many.—A. I am not familiar enough with them to tell the difference.

Q. What was its length?—A. I do not know.

Q. Do I understand that you decline to state the length of this piece?—A. Not at all; I have described it as near as I could.

Q. We have asked you for the length of it.—A. I can't tell the length of it.

Q. The color of it?—A. No, sir.

Q. Could you see the hammer?—A. No, sir.

Q. The barrel?—A. No, sir.

Q. Could you see crooks in it?—A. No, sir.

Q. It might have been perfectly straight?—A. It might; yes, sir.

Q. Was it black or light colored?—A. It looked black or dark colored to me.

Q. All the distance—its whole length?—A. I didn't observe it close enough to answer those questions, sir. I merely say that it appeared to me to be a gun.

Q. Didn't you testify before Mr. Purdy and Major Blocksom?—A. I did, sir.

Q. Didn't you describe it as being a gun, before them?—A. I did not testify before Major Blocksom, but Mr. Purdy; yes, sir.

Q. And you described it as a gun?—A. Yes, sir; because it naturally occurred to me as being a gun. I didn't think it was anything else.

Q. Why did it naturally occur to you that it was a gun?—A. It was a natural thing for a soldier to be carrying in that way.

Q. Did you ever see a soldier in your life except that he was carrying a gun?—A. Oh, yes.

Q. As a matter of fact did you not testify before Mr. Purdy that he had his firepieces with him?—A. I think not, sir. I don't know to what you refer—don't know the terms.

Q. Did you not testify before Mr. Purdy, after being first sworn by Major Blocksom?—A. I testified before Mr. Purdy; yes, sir.

Q. Did you not, as a matter of fact, sign and swear to this evidence?—A. Yes, sir.

Q. Did you not have ample opportunity to read it and see if it was correct?—A. I think I read it; yes, sir.

Q. Then, if that statement appeared in that evidence, you must have made it—isn't that true?—A. Yes, sir.

Q. Did you not at that time and in that evidence say that he had his fire pieces with him?—A. I think I said that he had a gun, and I think so now. Of course, you ask me to swear directly whether it was a gun or not, and from that distance, I tell you I couldn't do it.

Q. Then you can not swear distinctly that he had a gun?—A. He

had something that resembled a gun, and it looked like it, and I believed at the time and do now that it was a gun.

Q. You haven't told us anything yet that made it look like a gun to you, have you?—A. As near as I could describe a gun.

Q. Isn't there a sentinel who walks there just inside the garrison wall?—A. I never have seen one there.

Q. And yet you said you had lived there for a year and a half?—A. Yes, sir.

Q. Are you prepared to state to this court that there was no sentinel walking between the garrison wall and the barracks there?—A. No, sir; I simply say that I never saw one there.

EXAMINATION BY THE COURT.

Q. Did you hear the click of the breech block as the man was carrying it, or fixing it with his right hand?—A. No, sir; I did not.

Q. Did you hear any other sound, at that time, coming from that direction?—A. No, sir.

Mr. CHARLES B. CHACE, a witness for the prosecution, was duly sworn, and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. What is your name, residence, and occupation?—A. Charles B. Chace; residence, Corpus Christi, Tex.; occupation, locomotive engineer.

Q. Where were you on the night of August 13, 1906?—A. At Brownsville.

Q. How did you happen to be there?—A. On account of being there at the end of my run—I was running from Corpus Christi to Brownsville.

Q. What time did your run end upon this night?—A. 5.40 p. m.

Q. Where were you between the hours of 11 and 12 that night?—A. At Miller Hotel.

Q. Do you usually stop at the Miller Hotel?—A. Yes, sir.

Q. Had you stopped there often?—A. I had been stopping there from the October previous.

Q. You are familiar with the external appearance of that hotel?—A. Yes, sir.

The judge-advocate here handed the witness a photograph which was in evidence, and is hereto appended and marked thus: #.

Q. What is that place on the photograph which you have in your hand?—A. That is the Miller Hotel, Brownsville, Tex.

The judge-advocate here handed the witness another photograph which was in evidence, and is hereto appended and marked thus: ✓.

Q. What place is this on the photograph?—A. Miller Hotel, Brownsville, Tex., corner Thirteenth and the alley.

Q. Are you familiar with maps?—A. I can read blue prints.

Q. Will you go to that large wall map and point out, if you can, the Miller Hotel, and also the exact location of your room upon that

night? That is a map of Fort Brown, in the town of Brownsville.—A. Here is the Miller Hotel; my room was in there in the third story; Miller Hotel is on Thirteenth street.

Q. Did you notice anything unusual that occurred upon that night—the night of August 13?—A. I was wakened during the night with a volley of shots.

Q. From what direction?—A. The direction of the post.

Q. About how far away?—A. That I couldn't say.

Q. After the first volley, was the shooting continued?—A. It continued; yes, sir.

Q. Was it continuous firing or a series of volleys?—A. After the first volley it was continuous firing, or series of firing, as I heard it.

Q. Then there were intervals of silence between these various firings?—A. Short intervals.

Q. How close did the sound of the firing approach the Miller Hotel?—A. From the time I heard the first volley—that was at a distance—and then it came down the alley toward the hotel.

Q. What was the nature of these rackets? What did they sound like?—A. Sounded like shots from a gun.

Q. Any particular kind of a gun?—A. I am not familiar with guns.

Q. Kindly continue and tell the rest of these unusual disturbances that you heard, or saw, upon that night, and it may be well for you to point out on the map, as you go on, the locations, different streets, or alleys.—A. As I heard it and saw it from the time that I was awakened in my bed—I retired, as usual, about 9.30 on that night, and I was awakened through the night with this volley of shots, and after I heard the first shots I got up and looked out of the window, and the first thing I saw was a man going around from Elizabeth street to the corner of the King Building, as I call it, but they call it the Wells Building, as I have always been told it was owned by the King estate, or by Mrs. King. This gentleman went up on this side of Thirteenth street and went up this way; that is on Thirteenth street, not quite half way between Cowen alley and Washington street, on the farther side from the barracks. As I looked out they lighted a lamp in the second story of that building; then I heard four or five voices holler: "Put out the lamp!" I looked farther up the street then, and I saw the lieutenant of police coming down Washington street on horseback.

Q. You recognized him as such?—A. Yes, sir; and two men walking beside of him—beside the horse. I watched the lieutenant of police until he passed my window, coming down Thirteenth street toward Elizabeth street, and at the same time this firing was continuing and approaching the Miller Hotel through this alley.

Q. Did you hear any sound of voices about this time?—A. No, sir; they hadn't got far enough along yet. After the lieutenant of police passed my window, then I saw two soldiers pass here, through this alley, across Thirteenth street, and stopped here, after they got across, they stopped right in the alley, at the corner of Thirteenth street, on the opposite side of the Miller Hotel.

Q. How do you know they were soldiers?—A. By their uniforms.

Q. Describe their uniform and anything else about them that caused you to think they were soldiers.—A. I was looking up here

to see what I could see; they had on duck pants, leggings, uniform hat, and both dressed alike.

Q. What did they have in their hands?—A. I couldn't say. I can tell you what they had over at the corner of the alley and Thirteenth street.

Q. Those were the same two men that you saw across Thirteenth street?—A. Yes, sir.

Q. And you say you could tell what they had?—A. When they were over there I could.

Q. What was it?—A. They had a gun.

Q. You are certain it was a gun?—A. Yes, sir.

Q. Was it very light about that time?—A. Not so light as it might have been.

Q. What was the nearest artificial light?—A. There is one—there is one (indicating on map).

Q. What happened after you saw those two men at the corner?—A. They stopped there and shot.

Q. What direction?—A. I should judge in the direction of the Miller Hotel—to my window—this shot was fired from Thirteenth street and the alley—right here.

Q. What was the color of these men?—A. I couldn't say.

Q. You just recognized them as soldiers?—A. Yes, sir; I was up in the third story, and looking down on the men; with those hats on, I couldn't see.

Q. Did they, at any time, look toward you?—A. I couldn't say, but when they shot, they shot toward the Miller Hotel.

Q. Did you hear the shots?—A. The whiz of the shots.

Q. How close were they when they shot?—A. They shot to the right and left of my window.

Q. Did you, at any time, see any marks there from these bullets?—A. They are still on the hotel.

Q. About how far from your window?—A. I should judge 3 or 4 feet.

Q. About this time where was this lieutenant of police?—A. He had passed my window, and he was between my window and the corner of Elizabeth street—down in here (indicating).

Q. Did you see any shots fired at him?—A. After they shot toward my window in the hotel, then I ducked my head down for protection, and afterwards I heard shots from the corner there, and the powder shot up into my room.

Q. Did you notice anything peculiar about the odor of this powder?—A. No, sir; all powder is alike to me. I am not a military man—never had a gun of any kind, but when it comes to a locomotive I can tell you all about it.

Q. What happened after that? After the shooting ceased what happened?—A. After the shooting I saw the lieutenant of police's horse lying down.

Q. What was he doing there?—A. I wouldn't say he was dead, but he was dead next morning when I went down there.

Q. Where was the lieutenant of police at this time?—A. I couldn't tell you—I had no business with my head out of the window after they shot up around there.

Q. Where did this firing continue, then?—A. Down in this alley.

Q. Did you hear shots from any other direction at this time?—A. No, sir.

Q. Will you kindly tell the court anything else that occurred upon that night which you saw or heard, which you have not testified to?—A. That is all I know.

CROSS-EXAMINATION.

QUESTIONS BY THE COUNSEL FOR THE ACCUSED.

Q. How old are you, Mr. Chace?—A. Fifty-one years.

Q. How long have you been running on that run you speak of?—A. A year and five months. I am not on the same run right now, but I was on that run one year and thirteen months.

Q. Have you been a locomotive engineer all your life?—A. Not all the time.

Q. How long have you been running a locomotive—in the neighborhood?—A. For twenty-three or twenty-four years, off and on.

Q. Where have you lived all your life?—A. Various places.

Q. Have you ever lived near what is known as the "Mason and Dixon line?"—A. Yes, sir.

Q. Where?—A. Massachusetts.

Q. Where were you born?—A. Taunton, Mass.

Q. How long have you lived in Texas?—A. Thirty-one years.

Q. Will you go to the map, please? Do you see that arrowhead up there?—A. Yes, sir.

Q. What does that mean?—A. North, south, east, and west.

Q. Is that correct on the map?—A. Yes, sir; those are the correct directions.

Q. What direction was the wind that night?—A. I couldn't say. It is generally from the south in Brownsville in the night.

Q. Who was that man who came around the corner of Elizabeth and Thirteenth streets, came into Thirteenth street when you first saw him? Did they come in the direction away from Fort Brown?—A. From off Elizabeth street—from this way (indicating). From the direction away from the fort.

Q. Who was he?—A. I did not know at the time, but I afterwards learned, the next morning, that he was Mr. Tillman, proprietor of the "Ruby Saloon."

Q. Not a soldier, then?—A. No, sir.

Q. How was he dressed—the color of his shirt?—A. Light-colored shirt.

Q. Where did you first see those soldiers that you spoke of?—A. Across Thirteenth street, on the alley.

Q. Tell us exactly how they were dressed.—A. I can't tell you exactly, but pretty near. They had uniforms of soldiers that they all wore down there, when I saw them as they went by the Miller Hotel. They had on light pants, had on leggings, both dressed alike, and had soft hats with quite a wide brim, as they usually wear.

Q. What kind of a coat?—A. I wouldn't swear whether they had a coat on or not.

Q. Did you see the gun?—A. I didn't see the gun then.

Q. You only know that they had a gun from the fact that you heard the shot?—A. I heard the shot and saw the flash of the gun and heard the whiz of the bullet.

Q. Where did you see the flash?—A. After they crossed Thirteenth street and went over there, near the corner of the alley.

Q. Will you say you didn't notice whether they had on coats or not?—A. No, sir; I wasn't making any inspections at all.

Q. What was the ordinary uniform of the colored soldiers?—A. I couldn't say.

Q. Can you say whether they wore long trousers?—A. No, sir; they had on leggings—didn't wear long trousers.

Q. Do you know whether the colored soldiers that were stationed at Fort Brown at that time wore, as a general thing, the long trousers, or whether they wore breeches and leggings?—A. They had breeches and leggings on most of the time.

Q. Did you ever see any of them without?—A. I couldn't say; I wasn't making inspections of soldiers there.

Q. You testify with a great deal of accuracy about those two men.—A. Yes, sir.

Q. I want your best recollection.—A. That is my best recollection.

Q. When you saw the flash of those guns, was it light so that you could see the complexion of the men at all?—A. The gun flashed, but I wasn't watching to see who they were.

Q. You wouldn't swear that they were negro soldiers?—A. They had the uniform on. There were only colored soldiers stationed in Brownsville; they were all I saw.

Q. There is no dispute that colored soldiers were stationed in Brownsville, but the question I want to straighten out is, did you determine that the men were negro soldiers from the fact that you know there were negro soldiers stationed in Fort Brown at that time?—A. All I can swear is that those men had soldier's uniforms on; I can't swear that they were negro soldiers.

Q. Can you swear that those same men that fired the shot were the same men that you saw go across Thirteenth street?—A. Yes, sir.

Q. Where were those men stationed, again, that fired this volley that raised such a smoke?—A. They were at the corner of the alley, longside of the Miller Hotel; probably 30 or 40 feet from the alley.

Q. Did you see any men there, where you have pointed on the map, directly under your window?—A. No, sir; there was too much shooting going on.

Q. You don't know, then, whether any men were there or not, do you, in Thirteenth street?—A. I couldn't swear whether there were any men there, but there were some guns there, though.

Q. Then you didn't mean to say that you know, of your own knowledge, that those men were in Thirteenth street?—A. No, sir; I supposed they were there, as the smoke came up to my window.

Q. That is an inference, and not a fact based on your own knowledge?—A. I didn't say so; I am telling you what I heard.

Q. Your room was in the third story of the Miller Hotel, was it not?—A. Yes, sir.

Q. How high was that?—A. I don't know; never measured it—about 25 feet.

Q. And how many shots do you think were fired around there at that time?—A. I couldn't say; didn't count them.

Q. The wind was from the south?—A. Yes, sir.

Q. Give us an approximate of how many shots there were.—A. I am not going to; can't do it.

Q. What is your best judgment?—A. Major, we were in the same fix that night that you would be in on the battlefield—we were not counting shots. I didn't go down to that hotel that night for that purpose. After they had fired the first shot I had no further use for them; I was there for my night's rest.

Q. I am entitled to know and I want to know what is your best judgment as to the number of shots that were fired right there where you have pointed, approximately.—A. I can tell you some of the shots hit Miller Hotel.

Q. I didn't ask that.—A. I am going to tell you what I know.

Q. You heard these shots, and we are entitled to your best recollection as to how many there were.—A. There might have been ten or one dozen fired right around that corner. There wasn't so many fired there as there was in the first volley, I can tell you that.

Q. Where would you say that first volley was?—A. The direction of the shots were from Fourteenth street and Cowen's alley.

Q. How long, Mr. Chace, after you heard that shot fired around there, was it that you smelled powder? You say the wind was blowing that night.—A. The wind generally blows from the south.

Q. The wind, in its general direction, would blow that smoke away from your window, would it not?—A. Not if it is from the south.

Q. Why not?—A. The south wind comes from over in here (indicating near the alley).

Q. The alley is away from your place.—A. I told you it was along there—along the corner of the alley, about 30 to 40 feet along on Thirteenth street——

Q. If that man was here on Thirteenth street shooting and the wind is in the south——A. If the wind is from the south it would blow the smoke toward my window.

Q. Didn't you testify before Mr. Purdy?—A. Yes, sir.

Q. And that testimony was all taken down in shorthand and afterwards transcribed, and you signed it and swore to it?—A. Yes, sir.

Q. You were given an opportunity to read it over?—A. Yes, sir.

Q. I will ask you if you did, or did not, testify as follows:

Q. Will you describe now, Mr. Chace, as nearly as you can, the appearance of the men that you saw go across Thirteenth street?—A. I saw them go across Thirteenth street—there were two together and they went across Thirteenth until they got into the shadow of the brick building in the alley.

Q. How were they dressed?—A. That I could not say positively; it was a rather dark night, but further up the street, when I saw the marshal, I could see, because the light was on the corner, but right at the hotel it was dark.

Q. Did you answer that?—A. Yes, sir; if it is down there.

Q. Now, you state that you saw two negro soldiers; how do you know that?—A. Because they were dressed in different clothes from what a citizen would be wearing.

Q. Did you say that, sir?—A. Don't soldiers wear different clothes from citizens?

Q. Did you so testify?—A. Yes, sir; if it is there, I expect I did.

Q. What was their color?—A. I could not tell; it was dark.

Q. Did you so testify?—A. Yes, sir; I expect I did; but let me tell you, I have not memorized my testimony.

REEXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. You say you have lived in the North?—A. Yes, sir.

Q. Ever run an engine while you lived in the North?—A. No, sir.

Q. Can you tell the court whether or not it is easier to see at night in the South than in the North?—A. It depends upon whether it is moonlight or starlight.

Q. In comparison.—A. I don't know much about the nights in the North. While I lived there I never worked nights, but I have worked nights in Texas.

Q. Have you a general impression, however?—A. The only thing is, the sun rises there earlier in the summer, and there is more twilight than there is here.

Q. I am speaking now about the nights.—A. I was North all summer summer before last, but I couldn't see any material difference.

Mr. JOE BODIN, a witness for the prosecution, was duly sworn, and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Where were you on the night of August 13, 1906?—A. Brownsville, Tex.

Q. How did you happen to be in Brownsville on this night?—A. I was running from Corpus Christi to Brownsville, and this was our run. We arrived there at 5.40 the evening of the 13th.

Q. Where did you spend the night of August 13, 1906?—A. Spent it in Brownsville in the Miller Hotel—the 14th I was in Corpus Christi.

Q. The night of August 13 you were in Brownsville?—A. Yes, sir.

Q. Are you familiar with maps?—A. No, sir; not very much.

Q. Go to the wall map and point out, if you can, the location of the Miller Hotel—that is a map of Fort Brown in the town of Brownsville. What is the number of the house on that map?—A. No. 5.

Q. Point out the location of your room in the Miller Hotel upon that night.—A. It is about here on Thirteenth street; here is the alley, and my room is facing to Thirteenth street on the third floor.

Q. Did you hear or see anything unusual upon that night?—A. Yes, sir.

Q. State to the court what you saw, or heard, of an unusual nature.—A. I was awakened about 11.50 or 11.55 by a shot; I didn't know what was the matter, and I went into the next room, the room of Mr. Chace, and I asked him if he knew what was the matter, and he said, "No." I went back in my room and was standing at my window and looking out of the window. I came out of the room, and in maybe a minute and a half I heard the footstep of a horse coming from Washington street toward Elizabeth street, and just as the horse got about 10 or 20 feet from the alley they started shooting at the horse, and the man kept coming, coming very rapidly on his

horse, and they shot at him until he got to the corner, because I could see the shots hitting the opposite building, and as the horse got to the corner it fell on the corner of Elizabeth and Thirteenth streets, just as he went to turn, and then I leaned out of the window to see what had become of the man, and just then I felt a shot hit the side of my window toward the alley about 2 feet; that is, from the window casing, about 2 feet toward the alley and about 3 feet from the window sill up, and then I looked toward that way and I saw two men dressed in United States uniform walking across the street toward the alley; that is, from the barracks going to the alley—going to the next street from where I was.

Q. What were these men doing?—A. They walked from the corner of Miller House on the far side of the street, on the alley.

Q. Walked down the alley and crossed Thirteenth street?—A. Yes, sir; from the Miller House.

Q. Describe how these men were dressed that you saw.—A. As far as I could see they were dressed in these brown uniforms—little lighter than this major is wearing (indicating service uniform).

Q. What did these men do just as they went across the street?—A. I looked and I saw the flash out of a gun, and I could feel it hit the building, and then I went in.

Q. Whose room were you in?—A. My own room, sir; 43.

Q. Did you hear any remarks made?—A. No, sir.

Q. That is, from the outside?—A. Yes; I heard hollering; but I did not understand what was said.

Q. Who was apparently doing this hollering?—A. No telling—it came from that corner from where they crossed.

Q. About how many people did you see dressed in the uniform of the Army?—A. The two that crossed the street.

Q. Those were the only two?—A. Yes, sir.

Q. Was there any other firing going on at that time that you heard?—A. After that, yes, sir; they went up the street, up the alley—they went west; that alley runs east and west.

Q. Did they go up the alley away from the barracks?—A. Away from the barracks; yes, sir.

Q. Then what occurred?—A. I heard some shots in that place down there—down the alley.

Q. About how far down the alley?—A. About half way down—maybe 100 feet.

Q. What became of this man who was riding this horse?—A. I don't know; after he fell off the horse I didn't see what became of him.

Q. What was the color of the horse?—A. White.

Q. Was Thirteenth street well lighted, or not, that night?—A. No, sir; only a starlight is all—there was a light at Washington and Thirteenth and one at Elizabeth and Thirteenth.

Q. You say it was a starlight night?—A. Yes, sir; bright night.

Q. Was it fairly light in the street or dark?—A. Fairly light—not very dark.

Q. So, after these shots struck your window, you say you drew in your head?—A. Yes, sir; after the second shot struck my window I did, and I stayed in, too.

Q. Did you hear any more shooting?—A. No, sir; that is about all I heard.

Q. What did you do for the rest of the night?—A. Well, after I went in, I went in another room, and I stayed there about three or four minutes, and then I came back in my room and went to bed and stayed there all night.

Q. Did you ever live in the North?—A. No, sir.

The witness was here handed a photograph, which was in evidence, and is hereto appended and marked thus: "×".

Q. Will you point out on this picture where your room was on that night?—A. Yes, sir; here it is. This is the best I can do. I am not very familiar with the house. I think this is it (indicating the third window from Elizabeth street on Thirteenth street, in the third story).

The court then took a recess until 2 o'clock p. m., at which hour the members of the court, the judge-advocate, the accused, his counsel, and the reporter resumed their seats.

CROSS-EXAMINATION.

QUESTIONS BY THE COUNSEL FOR THE ACCUSED.

Q. How old are you, Mr. Bodin?—A. Twenty-seven years.

Q. What have you been doing all your life, Mr. Bodin?—A. First one thing and then another—mostly railroading.

Q. How long have you been working at that?—A. About nine or ten years.

Q. How long have you been firing?—A. About two years.

Q. Who has been your engineer during that time?—A. I have had several, sir.

Q. Did you ever fire for Mr. Chace?—A. Yes, sir.

Q. How long have you been firing for him?—A. About nine months.

Q. Between what dates have you been firing for Mr. Chace?—A. From April 10, 1906, until the date we left, January 3, 1907.

Q. So you were firing for Mr. Chace on the 13th of last August?—A. Yes, sir.

Q. And is that the reason you rushed into his room when you heard that firing that night?—A. Yes, sir; he is a good friend of mine.

Q. Ever talk this over with Mr. Chace?—A. Yes, sir; but very seldom.

Q. Well, how much?—A. I couldn't say.

Q. More or less.—A. I have no idea.

Q. Did you ever tell him what you saw that night?—A. No, sir.

Q. Sure about that?—A. Yes, sir.

Q. Did he ever tell you what he saw?—A. No, sir.

Q. What did you tell him?—A. It was very little. I just asked him what he thought about it.

Q. Didn't he answer you?—A. Well, yes. He said he thought it was an outrage.

Q. You thought so, too?—A. Yes.

Q. Didn't you tell him that you knew it was soldiers doing it?—A. No, sir.

Q. Are you sure about that?—A. Yes, sir.

Q. Did he tell you that it was soldiers?—A. No; he did not.

Q. Are you sure about that?—A. Yes, sir.

Q. Why did you refrain from telling him it was soldiers, if you knew it?—A. Well, it was none of my business to go and tell him all that, because I didn't want to be interested in this case at all.

Q. Still, you thought it was an outrage, didn't you?—A. Sure I did.

Q. Didn't you think that you owed it a duty to society to tell what you knew about it?—A. No, sir.

Q. How light was it that night?—A. Starlight.

Q. How far could you identify a man that night?—A. Oh, maybe about 100 feet.

Q. You think you could identify a man 100 feet?—A. Yes, sir.

Q. Sure about that?—A. Yes, sir.

Q. You don't think you could tell whether a man was a white man or a black man, though, beyond that distance?—A. I don't know exactly whether I could or not.

Q. We want your best judgment, because you have testified very positively. We want to know just how far you could identify or distinguish a white man from a black man that night.—A. I told you about 100 feet.

Q. Would you be willing to swear that you could not at 110 feet?—A. No; I wouldn't.

Q. Would you swear that you could?—A. I don't know whether I could or not, either.

Q. Would you swear positively that you could at 100 feet?—A. Yes, sir.

Q. Are you sure of that?—A. Yes, sir.

Q. The room that you slept in was in the third story of that building?—A. Yes, sir.

Q. Was there any light on the alley or Thirteenth street where they crossed each other?—A. No, sir.

Q. What lights were in that vicinity?—A. One at Washington and Thirteenth and one at Elizabeth and Thirteenth.

Q. Were they lighted that night?—A. Yes, sir.

Q. Sure of that?—A. Yes; I am positive.

Q. Did they show down as far as the crossing of Thirteenth street and the alley known as Cowen alley?—A. This was not Cowen alley.

Q. You said you could read a map?—A. Yes, sir.

Q. Will you go to the map there and explain to us what you mean—point out that alley?—A. There is the alley right here that I refer to, between Elizabeth and Washington, crossing Thirteenth street.

Q. Now, tell us where you saw those two soldiers.—A. I saw them crossing this alley right there.

Q. Were they on the side of the alley toward the Miller Hotel, or on the opposite side?—A. The alley is very narrow—they were about in the middle of the alley, I presume—I didn't notice exactly.

Q. You didn't notice exactly where they were crossing?—A. No, sir; whether they were on either side of the alley or the middle of the alley.

Q. Did you notice where they stood when they shot?—A. Yes, sir; just about right here, beyond Thirteenth street.

Q. Wasn't there an awning around that house there on the corner of Thirteenth street and the alley?—A. Not that I know of.

Q. Did you look down pretty close in that direction?—A. No, sir; until I heard the shot I did not.

Q. After you saw the shot did you notice pretty exactly?—A. The only thing I could tell, there were two men in uniform standing here, at the second shot.

Q. Then you are satisfied there is no awning there?—A. No, sir.

Q. Will you swear that the men stood out away from the awning?—A. I could see them right where they were standing.

Q. Were they under an awning or not?—A. They were not.

Q. Are you sure?—A. Yes, sir.

Q. How many shots did they shoot from there?—A. Two of them.

Q. They both struck?—A. One of them struck.

Q. Where did it strike?—A. Struck the Miller House just about midway between the rooms 142 and 143—near the window.

Q. Was that the shot that you felt?—A. Yes, sir; that is the one I think I felt.

Q. What is the Miller House constructed of?—A. Brick.

Q. About how thick are the walls?—A. About 18 or 20 inches thick.

Q. Where did you feel it?—A. I was leaning out against the window, and I just felt it hit the window.

Q. Where did you feel it?—A. I just felt it hit the wall.

Q. Tell us where and how? That is a peculiar sensation; we want to know about it.—A. I felt it when it hit the wall; that's all.

Q. Tell us how those two men were dressed.—A. In uniform—United States uniform—Uncle Sam's clothes—little lighter than yours. (Little lighter than service uniform.)

Q. Were they all wearing clothes of the same color?—A. Yes, sir.

Q. Have coats on of that color?—A. Seemed to be that color; yes, sir.

Q. And trousers of the same color?—A. Yes, sir.

Q. Do you know what a legging is?—A. Yes.

Q. Did they have on leggings?—A. I never noticed.

Q. Well, when you say it was Uncle Sam's uniform, were the soldiers there wearing leggings or not?—A. Some of them do and some don't.

Q. Did those men have leggings on that night?—A. Not that I know.

Q. Have on tan shoes or dark shoes?—A. I don't know.

Q. Have a gun in their hands?—A. Something like a gun.

Q. What position did they hold it in?—A. I could see something that was similar to a gun. I wouldn't swear it was a gun.

Q. What position did they hold that something in when they shot?—A. Held it like a gun (indicating at the shoulder), up at the shoulder.

Q. What you conceived to be the usual way of holding guns when people shoot?—A. Yes, sir.

Q. Didn't hold it at the hip?—A. No, sir.

Q. Sure about that?—A. Yes, sir.

Q. From the left shoulder or right shoulder?—A. I couldn't say.

Q. You could see that they shot from the shoulder?—A. Yes, sir.

Q. Describe these men themselves—were they large men or small men?—A. Ordinary size.

Q. Both about the same size?—A. I couldn't say exactly—might have been little different, but not that I noticed.

Q. Were they both very dark, or what color were these soldiers?—A. Seemed dark to me.

Q. You have described the color of that cloth very accurately—now tell us what color the men were. Darker than the cloth?—A. Yes, sir.

Q. Both of them?—A. Yes, sir.

Q. Any marks on their faces, or not?—A. I couldn't say that.

Q. Any artificial light at that corner?—A. No, sir.

Q. You saw them through the natural light of the night, did you?—A. Yes, sir.

Q. How far is it from your room to that corner?—A. About 75 or 80 feet.

Q. Did these men look up at you?—A. I don't know whether they did or not.

Q. You were looking south from the third-story window, were you not?—A. Yes, sir.

Q. How could you see the faces of those men if they had hats on?—A. I couldn't say whether they were white or black men. I could see they were darker than your clothes. I could identify them by their clothing, that is all.

Q. You don't mean to say, now, that they were negro soldiers?—A. No, sir; they were dressed with the United States clothing on, that is all.

Q. You testified before Mr. Purdy, didn't you?—A. Yes, sir.

Q. And this testimony was taken under oath?—A. Yes, sir.

Q. It was signed in regular form?—A. Yes, sir.

Q. How did you infer they were soldiers, beside the fact that they had on that color of cloth?—A. That is the only thing I saw. They had their hats on, and they had guns in their hand, or something similar to a gun, which I thought was a gun.

Q. Didn't you say you recognized them as being soldiers by their following one another across the street, before Mr. Purdy?—A. Only by their clothes.

Q. This question was asked you, Mr. Bodin—

Q. Now, will you describe, as near as you can, the appearance of these two men as they crossed Thirteenth street, as they entered the alley across the Miller House?—A. The men were dressed in these brown suits and had hats on and what I presumed to be a gun in their hands, and one followed the other, going on the far side of the street—showing that they were soldiers.

Q. Did you so testify, or not?—A. I didn't say for sure they were soldiers. I said I thought they were by their clothing.

Q. Did you so testify or not?—A. Yes, sir.

Q. Is it the truth or not the truth?—A. I said because they had United States clothes on.

Q. Did you testify as has been read here to you, yes or no?—A. Yes, sir.

Q. Was it the truth or not the truth?—A. It was the truth.

Q. Describe those hats.—A. Well, they were a sort of Alpine looking hat—brim about 4 inches wide—split in the middle.

Q. Could you see that split in the middle?—A. Yes, sir; I could see that they were split.

Q. You were looking down on a man whose hat brim was 4 inches wide——A. I said about.

Q. Well, about—I won't fight about that—and yet you say that the faces were darker colored than the clothes. Is that so?—A. That is so.

Q. Did you see whether they had cords on these hats or not?—A. No, sir; I never noticed.

Q. You didn't notice the hats, then, with the same particularity that you did their pointing the guns?—A. No, sir.

Q. I think you said something about a shot this morning, hitting right close to you.—A. Yes; I said about 2 feet.

Q. Was it as near as that?—A. Yes, sir; may be a little more—just about 2 feet from the sill of the window.

Q. How do you know that it struck there?—A. Because I saw it.

Q. That night?—A. No, sir; next morning.

Q. You didn't know whether that shot struck there at any particular stage of the proceedings, did you?—A. No, sir.

Q. This morning you testified that you saw some shots strike the King Building?—A. Yes, sir.

Q. Where were you then?—A. Standing at my window.

Q. What is this building made out of?—A. Brick.

Q. Whereabouts did it strike it?—A. Just about the middle of the building and about 4 or 5 feet from the surface of the ground, and the other struck it in the doorsill, which is about 10 feet from Elizabeth street—up on top of the door.

Q. By what light did you see that?—A. I just saw when it struck—made kind of a little flash when it struck.

Q. I thought you said one struck the wall.—A. Well, it is brick.

Q. Struck fire, did it?—A. Yes, sir.

Q. Where did those shots come from?—A. From the Miller House side of the street.

Q. Were these men close to the Miller House at that time?—A. I don't know.

Q. Why don't you know, if you were looking out?—A. I didn't look that direction.

Q. You didn't look in the direction of the shot, but looked away from it?—A. I looked toward the horse—the horse was passing.

Q. When did those shots strike the King Building? Before that shot struck within 2 feet of you?—A. Yes, sir.

Q. How long after they struck the King Building was it that this one struck so close to you?—A. About two minutes—maybe not that.

Q. Had you seen these men at that time?—A. No, sir.

Q. How long after these shots struck the King Building was it that you saw these men?—A. About one and one-half minutes.

Q. How long after you saw them was it that the shot came near you?—A. About ten or fifteen seconds.

Q. Then what did you do?—A. Then I went in.

Q. Did you stay in then?—A. Yes, sir.

Q. Didn't look out any more?—A. No, sir.

Q. Now, how long was this, when you pulled your head in, and went into the corner—you did go into the corner, didn't you?—A. Yes, sir.

Q. How long was this from the time when you were first awakened?—A. About eight or nine minutes.

Q. How long did the firing keep up after that?—A. About a minute—maybe not that.

Q. Did you hear any voices, at any time, around the hotel?—A. Yes, sir; I heard a voice as the horse was coming by.

Q. What did it say?—A. I heard somebody holler or murmur something.

Q. Did you hear any voices in the rear of the Miller Hotel?—A. No, sir; I did not.

Q. None at all?—A. No.

Q. Did you hear any voices coming from where these men were that you describe so perfectly?—A. No, sir.

Q. There was no talking among them at all?—A. None that I know of.

Q. Did you see both of them shoot?—A. No; I did not.

Q. Which one was it that shot?—A. The one that was toward the Miller house—seemed to be about 4 or 5 feet apart—seemed to be.

Q. How wide is Thirteenth street there, Mr. Bodin?—A. About 10 or 12 feet—maybe 14 feet—very narrow alley.

Q. Thirteenth street, I mean.—A. Oh; that is about 30 feet, I guess—not quite—about 20 feet.

Q. How far was it from your window down to the corner of the King Building there, on Elizabeth street?—A. About 75 or 80 feet.

Q. Now, when these shots struck the King Building did you see anything but just the spark?—A. No, sir.

Q. Didn't see any dust?—A. No, sir.

Q. You were looking at the horse at this time, weren't you?—A. Yes, sir; toward the horse.

Q. A man was on the horse at that time?—A. Yes, sir.

Q. Your attention wasn't so distracted by the appearance of the horse that you failed to note these two or three shots that struck the King Building?—A. I noticed them pretty well; yes, sir.

REEXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. You used the words, in testifying before Mr. Purdy, "Showing that they were soldiers." What do you mean?—A. I just say they were, showing by their dress.

Q. Not the mere following each other across the street?—A. No, sir.

EXAMINATION BY THE COURT.

Q. When the men went down the alley from the hotel, after firing there, did they go toward the barracks, or away from the barracks?—A. Away from the barracks.

Q. Mr. Bodin, have you ever lived in Brownsville?—A. No, sir.

Q. Have you many acquaintances there?—A. Very few.

Q. Have you any interest in this case?—A. None at all.

QUESTIONS BY THE COUNSEL FOR THE ACCUSED.

Q. What do you mean by "interest in this case," when you answer that question?—A. I mean interested in the case—I mean that I have no interest in the case at all—by not living in Brownsville—nothing of the kind. I don't feel that I am supposed to have any responsibility in Brownsville at all.

Q. You think that was quite an outrage though, don't you?—A. Yes, sir.

Q. Felt a great deal of indignation about it, didn't you?—A. Well, yes, sir.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Did you ever testify before the grand jury?—A. No, sir.

Q. How did it happen that you did not?—A. I couldn't say—they never called me.

Q. Did you make any effort to keep from testifying before the grand jury?—A. Yes, sir; they never would have known that I knew anything about the case if they wouldn't have gotten it off the register.

Q. What register?—A. Brownsville register.

Mr. M. Y. DOMINGUEZ, a witness for the prosecution, was duly sworn, and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. What is your name, residence, and occupation?—A. M. Y. Dominguez; residence, Brownsville; occupation, lieutenant of police.

Q. How long have you lived in Brownsville, Mr. Dominguez?—A. I was born and raised in Brownsville.

Q. How old are you?—A. Going on fifty-eight years of age. This October I will be fifty-eight years of age.

Q. At present what is your official position?—A. Lieutenant of police.

Q. How long have you been lieutenant of police?—A. About twenty or twenty-five years.

Q. How long have you been a policeman?—A. When I was twenty-five years of age I went on the force, and I was about eight or nine or ten years as a policeman.

Q. Where were you on the night of the 13th of August, 1906?—A. In Brownsville.

Q. Did anything unusual occur in Brownsville that night, to your knowledge?—A. I heard some shots fired about eight or nine minutes before 12 o'clock.

Q. Tell me where you were when you heard these shots.—A. At the market, where the station house is.

Q. Tell me what occurred after that.—A. I heard shots fired, toward the reservation.

Q. Then, as you mean to say, the shots were directed toward the reservation?—A. Yes, sir; that direction.

Q. The sound of the shots came from the reservation?—A. Yes, sir; and I started on horseback toward the reservation on Washington street and went as far as Thirteenth street and Fourteenth street, and when I got to Fourteenth street they got through shooting in the alley, where Mr. Cowen's house is. It is a half block from the

alley where Mr. Cowen's house is, and the corner where I was standing, and about a second or two seconds after that I saw some two soldiers go from the alleyway into the same alley, but across the street, leading in the alley that runs by Miller Hotel.

Q. Are you familiar with maps?—A. Not much, sir.

Q. Can you understand that wall map there? It is a map of Fort Brown, in the town of Brownsville—can you tell anything about what that means?—A. Yes, sir.

Q. Can you go there and tell us, on that map, where you were that night and what you did.

The judge-advocate here showed witness the locations on map.

Q. Now, trace your testimony where you left off, beginning from the first point on this map.

The witness was here shown where the market is located on the map, as follows:

The market runs from Twelfth street over to Eleventh street, occupying a large square, beginning back here on Twelfth street, directly running to Eleventh, down to about here, if that map was extended, and back again over to Twelfth, and then in that direction, to the place of beginning. In other words, it is in the middle of this block, between Adams and Elizabeth streets—the police station is a building situated in the middle of that market square, the end toward the post, toward Twelfth street—the entrance to the police station is upstairs, over the market place.

The examination was then continued:

Q. Now, Mr. Dominguez, will you begin at the market place and trace your steps from there?—A. Here is Thirteenth street—then from there I went to Thirteenth street—from Twelfth to Thirteenth and then to Fourteenth street. At the corner of Fourteenth and Washington streets I got as far as right in the middle of the street, and from there, you know, it is a half a block where Mr. Cowen's house is—there is where I saw the soldiers go through the alley, from one end of the alleyway to the other.

Q. You saw soldiers at the Cowen house?—A. Yes, sir.

Q. What were they doing?—A. They got through shooting and they went across the alley toward Miller Hotel. They just got through shooting, and most of them went across the alley toward Miller Hotel.

Q. What direction did they take then? You say you were at the corner of Washington and Fourteenth streets?—A. Yes, sir; from the corner of Washington street I saw in the alley at Mr. Cowen's house—I saw some Government soldiers go by, that is, across the alley—when they passed across the alley came down toward Miller Hotel and the alley, and when they got about 25 feet in the alley—25 feet from the gate of Miller Hotel, in the alley—I was going down Elizabeth street.

Q. What did you do after you left the corner of Washington and Fourteenth? What street did you go down?—A. I went back to Thirteenth street.

Q. On what street?—A. On Washington street.

Q. And when you came to the corner of Washington and Thirteenth what direction did you take?—A. I came on Thirteenth street.

Q. Toward what street?—A. I came from Washington street and

passed by the alleyway of Miller Hotel, between Washington and Elizabeth streets.

Q. Going toward what street?—A. Toward Elizabeth—the street that runs by Elizabeth street.

Q. When you got to the alley which is known as Cowen's alley—that is, the alley between Washington and Elizabeth, on Thirteenth—I mean right there at the corner of the Miller Hotel, what did you see there?—A. As I passed the alley at Miller Hotel going toward Elizabeth street, I crossed to Thirteenth street and got across the alley, and I heard a man speak. The word he said was an obscene term.

Counsel for the accused:

We shall insist upon it, may it please the court.

Q. Was the word merely profane or obscene?—A. Not merely obscene.

Q. Tell the court what he said.—A. As I passed the first word I heard was, "Give him hell."

Q. And then what happened?—A. And then there was a volley of fire—fired a volley.

Q. In what direction was this volley fired—toward what? Fired toward you or somebody else?—A. When I passed this alley, going on Thirteenth street toward Elizabeth street——

Q. What was this volley fired at? Fired at you, or somebody else?—A. Fired at me.

Q. Where did they hit?—A. I crossed the alley, and I wasn't hit then, but then they came out in the street, and one file of soldiers took the Miller Hotel sidewalk and the other file at Mr. Wells' office side, at the King Building, and then when they came out and took that position on each side they commenced shooting at me. I commenced hollering to the Miller Hotel to wake up; that the colored soldiers were firing into the houses and killing people and to wake up and escape themselves the best they could, because I couldn't fight 15 or 20 men, and I proceeded from there to Elizabeth street, and when I got to the corner of Elizabeth street I was shot in my arm and my horse was shot.

Q. Who were these men who were doing the firing?—A. Government soldiers—colored soldiers.

Q. How did you recognize them?—A. Because I was just about inside of 60 feet from them, and I could see them plain enough, because I was between two lights; there was one light at the corner of Washington street and the other at Elizabeth street.

Q. Could they have been white men?—A. No, sir.

Q. Mexicans?—A. No, sir.

Q. Did you say anything to these men at this time?—A. Not a word.

Q. Did you challenge them?—A. Yes, sir.

Q. What did you say?—A. As I crossed the street at the alley at Miller Hotel I said, "Halt, there."

Q. Did you threaten them in any way?—A. Not a word; that is all I said.

Q. Did you see a pistol on them?—A. No, sir.

Q. Did you make any effort to check them, except to say, "Halt, there?"—A. No, sir; because I thought the best plan was not to say anything, because I knew I was only one man, and they were 15 or 20

and the moment that I would stop I would have been shot off the horse, and I thought the best plan was just to holler at the people of Miller Hotel to wake up and to escape themselves the best way they could, because I was powerless—one man couldn't fight 15 or 20 men—I thought that was the best precaution that I could do—to let the people wake up and escape themselves the best they could.

Q. You say your horse was shot?—A. Yes, sir.

Q. What happened at that time?—A. I was shot and the horse was shot, and it stumbled across the street and went on the opposite side and opposite the King Building it fell—the corner of Elizabeth and Thirteenth streets.

Q. What became of you at that moment? Did you fall, too?—A. The horse fell and fell on me. I had this leg under the horse (indicating left leg).

Q. In what kind of a position were you sitting upon your horse when you crossed the alley and afterwards?—A. After I passed the street there they commenced shooting at me on Thirteenth street, coming toward Elizabeth street; it was rapid shooting, and I thought the best thing I could do was to stand on my stirrups—I was on the stirrups that way and my knees this way—and this way with my face, toward the two files of soldiers firing at me, and I thought if I showed my whole back I would be shot to pieces.

Q. Were you holding your bridle reins with your right or your left hand?—A. Right hand.

Q. Did your right hand project out beyond your body?—A. My hand was this way (indicating that he stood with his right arm extended, looking back over his left shoulder).

Q. Can you describe the dress of the men that were doing this firing at you?—A. Yes, sir; there were some with dark wool, blue flannel shirts, and some had coats—khaki coats—yellow.

Q. Did any others have any different kind of coats or shirts?—A. No, sir; only blue shirts, and others had khaki coats and hats.

Q. What kind of trousers did they have?—A. Yellow—khaki clothes.

Q. Did they have leggings on?—A. I didn't take notice of that; I didn't take very much notice, because I couldn't exactly look from up and down on them; but I knew they had Government uniform on—dark blue wool shirts.

Q. How many men did you see in this party?—A. When they came out on the street, and they were right on the street I could tell there was about 15 or 20 men; maybe 8 or 10 men on each side, more or less, on each side of Thirteenth street.

Q. After you fell with your horse what did you do?—A. I had this (left) leg under the horse, and while he was struggling I was trying to get off from the horse, and at last with this foot I slid myself out from under the horse, and while I was down they fired another volley at me.

Q. Did any of these shots take effect in you or the horse?—A. Not to me; might have been to the horse, but I didn't notice it.

Q. Your horse was killed?—A. My horse was killed right there.

Q. What did you do then?—A. I got up then, and when I got up on the sidewalk, I got hold of my broken wrist, this way, and turned around, and I saw them tiptoeing—going back toward the alley—just on the tiptoes—going very easy.

Q. Where did they go then?—A. I stood there looking until they got to the corner of the alley, which is Miller Hotel, which enters in the same alley, but right across—across from the Miller Hotel.

Q. Where did they go then?—A. Then I don't know, because then I started up the street on Elizabeth street, and when I got to the next corner I told some Mexicans to help me by the arm, because I was very weak, and to help me to the first drug store, because I wanted to have my arm bandaged.

Q. The first time you saw the soldiers in the alley, how far were you away from them?—A. About 25 feet.

Q. Was that the closest you were?—A. Afterwards going on Thirteenth street to Elizabeth street I saw them inside of about 60 feet.

Q. How close to the corner of Elizabeth street and Thirteenth did they approach? How far toward Elizabeth street did these soldiers come down on Thirteenth street?—A. I couldn't tell exactly, but they must have been pretty close to the corner.

Q. Pretty close to the street lamp?—A. No, sir; because the lamp is right across the street.

Q. Had you ever had any trouble with the soldiers?—A. No, sir; they had been there maybe two or three weeks, and I never had any words with them at all.

Q. Had you ever had any instructions from the mayor as to how to treat these soldiers? Had you, as a policeman, received any instructions from the mayor of the city as to what treatment you would accord these colored soldiers?—A. I never received any orders from the mayor, but I received them from the city marshal. He told us to be on the street to see that the soldiers would not abuse or use any vulgar language to the ladies.

Q. Were you told to treat them differently than you would anybody else?—A. No, sir.

Q. I see that part of your right arm is missing.—A. Yes, sir.

Q. Please tell the court how you lost it.—A. I was shot by Government colored soldiers.

Q. On this same occasion?—A. On the 13th of August; yes, sir.

Q. Was it necessary to amputate your arm as a result of this?—A. Yes, sir.

Q. Who did this?—A. Dr. Joseph Combe.

Q. When did he do this?—A. The next day.

Q. Which arm is it?—A. The right arm.

Q. Were you wounded in any other place?—A. Not that night.

Q. Is it customary, or not, in the city of Brownsville, in case of general or public danger, for the inhabitants to discharge firearms out of the window? In case of fire, for instance, or a grave disorder? Alarm shots, in other words?—A. In case of fire, there is a bell right at the market for the purpose of, whenever there is an alarm of fire, to ring the bell, and ring the bell according to the number of the precinct the fire is in, you know.

Q. But do not the inhabitants occasionally fire alarm shots out of their windows?—A. No, sir.

The court then, at 4.10 o'clock p. m., adjourned to meet at 10 o'clock a. m. on the 9th instant.

CHAS. E. HAY, Jr.,
Captain, Acting Judge-Advocate, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., February 9, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocate. The accused, his counsels, the reporter, and the judge-advocates were also present.

The reading of the proceedings of February 8 was dispensed with.

M. Y. DOMINGUEZ was reminded he was still under oath and testified as follows:

CROSS-EXAMINATION.

QUESTIONS BY THE ACCUSED.

Q. Since you have been lieutenant of police have you been mixed up in any shooting trouble in Brownsville?—A. Two years or two years and a half ago, while a soldier was intoxicated and shooting his pistol on Sixteenth street, I started to arrest him, and that's the time he wounded me.

Q. Is that the soldier that shot you while you held him by the hand?—A. Yes, sir.

Q. You so testified before the court?—A. I did.

Q. You testified that he fired three shots at you at that range, did you not?—A. Four shots, while I had him by the hand.

Q. And they took effect in your person?—A. Only one; the last shot.

Q. Did that show any powder burns on your clothes?—A. I don't remember.

Q. What was your testimony on that point?—A. I do not remember, sir; I do not remember.

Q. Were your clothes or any of them powder burned at that time? Yes or no.—A. I did not inspect my clothes because it was taken off and they throwed the clothes away; it was all blooded.

Member of the court here asked as follows:

Might it not be well to clear up in the mind of the witness whether you mean this last time or the time two years and a half ago?

By the counsel:

There is no purpose to get anything but the truth from this witness; if he is confused we have nothing to say, but it appears to us the question is perfectly straight; I have not said anything but about the affair in which he testified before the court he was shot four times, and we submit there is nothing in the examination thus far to confuse this witness, but if in the minds of the court there is anything confusing we are glad to have it explained.

By the judge-advocate:

I would like here to introduce an objection to this going into collateral matter, leading the minds of the court off the issue, and I object to introducing anything about any former trial or any former issue. The question at issue, as the court is well aware, is about the shooting by certain persons into the town of Brownsville on the night of the 13th of August, and I do not think it is proper to go back two or three or four years about other shooting or anything of that kind. If the purpose of the accused is to impeach the character of the witness, I think it can be done in another way.

By the counsel:

We have no doubt about that last statement—that this witness' character for truth and veracity can be impeached, but I don't think it is the province of the

judge-advocate or within his power to limit us to any particular method of impeaching a witness. We submit that if it can be shown positively that this witness has sworn falsely; that that is his reputation and his character, and he is introduced here as a reputable witness and his record for twenty years has been gone into by the prosecution, we have a right to show what his record for truth and veracity during that period has been, and that is the purpose—we don't dispute it; the whole tenor of the question goes to show it—and we have a right to know what that witness said on that particular occasion, during these twenty years as a member of the police in the city of Brownsville. We want you and the world at large to know the class of witnesses that are put before you to establish the truth or falsity of the charges. His whole record during the past twenty years certainly is in evidence.

By the assistant judge-advocate:

The judge-advocate has suggested that I say something on this question to the court. Would the court care to hear from me? With the court's permission, will the stenographer first read the last question put to the witness and to which the judge-advocate objected? (Question was read.) I take it that that refers to the time when the witness was wounded by this soldier, some two or three years ago. Now, I want to say to the court—I presume you are governed by the common-law rules of evidence—I am not familiar with military law at all, as military law. If you are, we say that this evidence is irrelevant and immaterial. While we recognize the right of the defendant, the accused, upon a cross-examination, to a great deal of latitude, still that latitude is circumscribed to some extent. It is not an indefinite latitude—there are bounds to it—and under our rule of evidence, under the common law, our courts have uniformly held that a witness upon cross-examination for the purpose of impeachment, to break down his reputation for truth and veracity, and thereby to weaken, to discredit his testimony given upon direct examination, may be interrogated as to matters that are pertinent to the issue, as in this case, I take it that is the object of the defendant herein, to show an animus on the part of this witness against the military; that is, against the soldiers of the Army; and if he can show generally, as he has already shown, be it worth what it may—I am not addressing my remarks to the weight of his testimony, but its admissibility—if he can show that this witness by reason of previous difficulties or a difficulty had between him and one or more men of the United States Army, a feeling of enmity, he can do so, but, may it please the court, to go into a collateral matter, such as the trial of the soldier whom this witness says shot him some two or three years ago, and to interrogate this witness upon each and every fact testified to by him upon that trial in the State court, would, I take it, and the courts have so held, be an examination of this witness to that extent upon matters collateral, outside of and disconnected with the main issue before this court, and so we say, and so we insist, not only the text writers, such as Mr. Greenleaf and others, uphold us, but the courts of our country—the civil courts, I mean—both Federal as well as that of the State of Texas—for I speak of no other; I have never practiced outside the State of Texas—sustain us; so that we say that this question is objectionable because the answer to it would be irrelevant and immaterial, in that it seeks to go out into the domain of collateral matters, disconnected with the one now before the court. The counsel has asked the witness, "Did you not have trouble with soldiers," in substance (I don't know that I quote the record exactly). The witness has answered in the affirmative; that is proper. "When?" "About two or three years ago." "I was shot while attempting to arrest an enlisted man who was drunk upon the streets and firing off his pistol." "Were you not holding him by the hand at that time?" "I was." "How many shots did he fire at you?" "Four shots." "How many took effect?" "One." Now we say, sir, that is sufficient. To go into the trial, as I said before, of that other case and permit this accused to interrogate this witness upon each and every fact, every particular bit of testimony given by this witness upon that trial, would lead, first—and this is the reason of the law why it is not permitted, may it please your honors—would bring about this condition of affairs: First, it would lead to an almost endless cross-examination; second, it would permit this accused to compel this witness to have retained in his memory each and every particular fact testified to upon the stand in that case; and third, the principal objection to it is—you would be retrying, sirs, that other case, and you would be compelled or expected to determine in your minds the

merits of the case against the party, the soldier whom this witness said assaulted him some years ago. Now, I grant you that the accused can go further with this witness; he can say to him, or he can ask him questions along this line: Have you, because of that wound inflicted upon you by that enlisted man some two or three years ago—are you by reason of that assault that you claim he made upon you while you were in what you conceived to be the discharge of your official duties, prejudiced, or have you formed from that time and retained in your mind, on the night of the 13th of August, in consequence of that alleged assault, any ill feeling or animus toward the enlisted men of the United States Army? That would be competent evidence. Because why? It would be for the purpose, as I stated in the outset, to show to this court that by reason of that animus, if it so exists, if he did entertain it on the night of the 13th of August, he is a prejudiced witness against the men of the Army of the United States, and if he succeeds in making this court believe that, to that extent he would weaken or maybe—I know not—destroy the effect of this man's evidence. But I again urge upon you, sirs, that to go out into this endless domain of collateral facts or circumstances would lead not only to confusion, but it would serve but one purpose and only one—to becloud the minds of this court as to the issue before you for determination. Thank you.

To which counsel replied:

May it please the court, I have been very much charmed at the oratory from the other side and I have been struck with one fact. He admits, and it is a fact that we can go into this affair in which this man claimed that he was shot for the purpose of showing prejudice, and that we can go further than we have and ask if that has created prejudice. Then will you tell me why, if we can do this, we can't show where that man was wounded, the nature of the wound, the fact that if it was so close that, if he told the truth, he must have been powder burned, and we can show that the man, in spite of this positive testimony and the wound, was acquitted, it would all tend to show the class of testimony this man is giving before you? It seems to me too simple to get up and argue any such proposition. If we can go into it in the manner in which the learned assistant judge-advocate says we can, will you tell me how, in the name of common sense, we can not go in and show how this man lied in this examination? There is the meat in the cocoanut. Just as soon as we attempt to touch that feature it immediately becomes incompetent, irrelevant, and immaterial. If we can go into that matter at all—this man's character is before you, was introduced, and is before you, for the last twenty years—we can show the class of man and whether he is worthy of credence, and that is all we want.

By assistant judge-advocate:

Counsel made a remark to this effect that they would show, while it is also irrelevant and immaterial, that the soldier who was tried for this assault upon the witness, whom witness says wounded him, was acquitted. Counsel labors under a serious misapprehension of the record of that case. The court will pardon me if I correct him. I speak from the record—I speak by the book—I prosecuted that case in the district court of Cameron County. The man was convicted by the jury. His counsel, Judge Parks, since deceased, whose name has been mentioned in the course of this case, appealed the case upon a question of jurisdiction, maintaining that the assault made by the soldier upon this witness was committed within 30 feet of this garrison wall (that is in record in this case), and therefore, under the deed from Mr. Stillman to the United States Government and the proclamation of the governor of the State of Texas to the Federal Government of the Fort Brown Reservation, which called for this strip of 30 feet outside of the garrison wall and toward the city of Brownsville, the trial court had no jurisdiction to try the case, and the court of criminal appeals, which is the supreme court in this State in matters criminal, sustained his contention, reversed and remanded the case to our trial court, the district court of Cameron County, it then being an undisputed fact that the shooting was done within that 30-foot line, and that thereby our court had no jurisdiction to proceed further with the trial of the case. The late Judge Stanley Welch, after consultation with myself, and going over the law and reading the opinion of our supreme court, and upon my suggestion and motion in open court, dismissed the case for those reasons. That's the history of that case, may it please the court.

By the counsel:

We are not familiar with the history of the case; all we know is that the counsel for accused in that case states in a letter in so many words, signed "Papa," and in a letter submitted by the War Department, says he cleared the man in the case. The particular facts we don't know. We do know the man was cleared.

The accused, his counsels, the reporter, the witness, and the judge-advocates then withdrew and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed to announce the decision of the court; that the objection of the judge-advocate to this question be not sustained. The question will be answered.

The question was then repeated.

A. I don't remember.

Q. I would like to know if the witness understands that the time referred to was when he claimed to have been shot by Soldier Baker?—A. Yes, sir.

(Question reread to witness: Q. Were your clothes or any of them powder burned at that time?—A. I did not inspect my clothes because it was taken off and they throwed the clothes away, it was all blooded.)

Q. When you answered that question that has just been read, did you refer to your clothes that you wore at the time you were shot by this man Baker—Soldier Baker?—A. Yes, sir.

Q. You were on duty as lieutenant of police last June, July, and August?—A. Yes, sir.

Q. Wasn't there an entertainment given to some newspaper men in the park in Brownsville about that time?—A. I do not remember.

Q. Was there an entertainment of any kind given in the park about July last?—A. I don't recollect at all, sir.

Q. Yet you were on duty as lieutenant of police at that time?—A. Yes, sir. I was unwell, and that's the reason I stayed in the station house. I did not go around that night, except only when I had call to.

Q. Then you did know that there was an entertainment in the park?—A. I do not recollect whether there was or not. I——

Q. What do you mean by your saying you were not on duty that night?—A. As I was unwell, I was sick.

Q. What night do you refer to?—A. The night I was shot by Baker.

Q. Just one year ago, or less than a year ago, nine months ago, I am talking about. In July last there was an entertainment given up in the park at Brownsville by the citizens of Brownsville.—A. I think there was an entertainment.

Q. Were you over in the park while this was going on?—A. No, sir.

Q. Did the soldiers help to fix it up for that entertainment?—A. I don't recollect, because I never go out to any balls or any place where there are too many lights, because I have been so long at night work that my eyes are weak, and it hurts the eyes, or during the day when the sun is shining.

Q. You mean to say that at night your eyes are weak?—A. Wherever there is light it hurts my eyes, and I can not remain there.

Q. You can't see very well when the light hurts your eyes?—A. Wherever there is a bright light it is——

Q. Then you feel that wherever there is a very bright light it injures the acuteness of your vision, is that what you mean to say?—A. It hurts my eyes, I can see, but it hurts my eyesight and I keep away because the next day I have neuralgia.

Q. Is it or is it not a fact that there was a sign stuck up at this entertainment, "No dogs or soldiers will be admitted"—the entertainment last July?—A. I don't know, because I did not go around there.

Q. You don't know whether it was stuck up or not?—A. I do not.

Q. What soldiers were stationed at Brownsville last July?—A. I think the Twenty-sixth Infantry.

Q. Judge Parks is the man who defended this soldier, Baker, wasn't he?—A. Yes, sir.

Q. Is it the same Judge Parks that has died since last August?—A. Yes, sir.

Q. Do you know how he died?—A. I was sick in bed from this wound and the amputation, but I heard, I believe, he fell from a window and killed himself.

Q. You believe he fell from a window?—A. That's what I heard; I was in bed at the time.

Q. Did you know Judge Welch—Stanley Welch?—A. Yes, sir.

Q. Is he dead now or not?—A. He is.

Q. Do you know how he happened to come to his death?—A. No, sir; I do not.

Q. Know nothing about it?—A. I heard in Brownsville while I was there that he was murdered in Ringgold, or the town near Ringgold.

Q. Now, exactly where were you when you heard shots toward the reservation?—A. At what time?

Q. On the 13th of August.—A. The first shots that I fired I was in at the market.

Q. The first shots that you fired you were in the market?—A. That I heard the shots; I was in the market where the station is, upstairs.

Q. What were you doing?—A. That's my post to be there; supposed to remain there and make my rounds when I wish to go; have no regular hours, but I was there at the time.

Q. What were you doing?—A. What was I doing? I was sitting at the steps waiting to hear the bell ring at the schoolhouse to ring for 12 o'clock, and I remained in the market because I knew it was getting close to 12, and that's the reason I stayed right at the steps.

Q. Were you downstairs or upstairs?—A. Downstairs.

Q. Then you were not upstairs?—A. I was downstairs by the steps.

Q. Inside or outside the building?—A. Outside the building.

Q. Where was your horse?—A. Tied up on the rack opposite the market.

Q. Which side of the market?—A. Outside on the edge of the sidewalk on the rack.

Q. Toward which street?—A. The streets are not named because the market is kind of a square, and right in the center is where the market is, which is not named.

Q. Well, Washington street passes by the market, does it?—A. The market is between Washington street and this other street I don't know the name of.

Q. We know where the market is. What we want to know, if you can tell us, is on which side of that market your horse was when you heard those shots?—A. The horse was tied on the south side of the market.

Q. Was that on Washington street?—A. Between that street and Washington street.

Q. On the Washington street side of the market?—A. It was on this side of Washington street, to the left.

Q. Was it on the Washington street or Adams street or Twelfth street side of the market? Your horse. That's what I want to know?—A. The horse was tied up, you know, on this side of Washington street, right in the square; there is a street there, but it is not named, where the horse was tied.

Q. Which side of the house were you on, what steps, toward Washington or Twelfth or Adams street?—A. It is in the center of the market between Washington and this other street, I don't know the name of it.

Q. How far did you have to go afoot before you got to your horse?—A. About 15 feet—15 or 20.

Q. About 15 or 20 feet?—A. From the steps to the rack.

Q. That's all you had to walk?—A. Yes, sir.

Q. Was your horse tied?—A. Yes, sir.

Q. Untied your horse?—A. Yes, sir.

Q. Did it have a saddle on?—A. Yes, sir.

Q. And you mounted the horse?—A. Yes, sir.

Q. And then where did you go?—A. I proceeded from the direction——

Q. I want to know what point you went to.—A. I started from there to the corner of Twelfth street and Washington street.

Q. How far were you from the corner of Twelfth and Washington streets?—A. I think about 50 or 60 feet.

Q. You had to go 50 or 60 feet horseback before you got to the corner of Twelfth and Washington?—A. Yes, sir.

Q. How long did this take you—to go to the corner of Washington and Twelfth?—A. I could not tell, you know, perhaps less than a minute.

Q. Had there been any more shots fired?—A. Yes, sir.

Q. How many more from the time you first heard the shots over there until you heard these?—A. Just a little after that; I could not tell you how many shots were fired.

Q. You didn't count them?—A. No, sir.

Q. Were there more than one?—A. Yes, sir.

Q. In volleys or in single shots?—A. Sounded like single shots.

Q. Where were they located?—A. Toward the reservation.

Q. Well, now, you are on the corner of Washington street and Twelfth; where did you go?—A. From Washington street and Twelfth I proceeded toward Thirteenth and Fourteenth streets, on Washington.

Q. What gait did you take? At what gait did you make your horse move?—A. Trotted.

Q. And when did you stop trotting?—A. I stopped trotting at Fourteenth street.

Q. Got off your horse there?—A. On Washington street, I did.

Q. You got off your horse on the corner of Fourteenth and Washington streets. What did you do with your horse?—A. I girthed it because it was loose.

Q. You cinched up your horse?—A. Yes.

Q. How long did that take you?—A. About a second, more or less.

Q. Where were you when you girthed the horse? Go and show me on the map there.—A. In the middle of the street.

Q. Right in the middle of——A. Fourteenth street.

Q. Fourteenth and Washington?—A. In Washington street, but right in the middle of the street.

Q. Were you in the middle of Washington street or Fourteenth street, which one?—A. I was on Fourteenth street.

Q. Where were you with respect to the street light?—A. Cater-corner.

Q. Cater-corner from the street light?—A. In the middle of Fourteenth street.

Q. How far from the street light?—A. About 20 feet, I think.

Q. But in the middle of the street, eh?—A. On the middle of the street.

Q. How long did you stay there?—A. I stayed there—just when I arrived there; just when they got shooting in the alley of Mr. Cowen.

Q. Whereabouts was the shooting exactly?—A. The shooting was in the alley there.

Q. Oh, well, the alley is pretty long, is it not?—A. It is close from the garrison wall.

Q. The alley runs from Fifteenth street clear beyond Twelfth street, doesn't it?—A. Yes, sir.

Q. Whereabouts on that alley were those shots fired?—A. It is more inclined between Fourteenth and Fifteenth streets, that's in the alley.

Q. How far from Fourteenth street were they?—A. I could not tell you.

Q. You didn't see any of the men there, did you?—A. I saw them when they came out across from the alley, across this, more like, or going toward Miller Hotel.

Q. When you got to that place there you got off your horse and cinched up your saddle; you were then 20 feet from the light, and these men were still in the alley between Fourteenth and Fourteenth [Fifteenth] streets; is that correct?—A. Yes, sir; having my back to the light.

Q. I would like to have the witness state exactly where he was.

(Don't take advantage of his youth and innocence, Captain Murphy; show him where the light is.) You were 20 feet from that light, according to your evidence; where were those men. (Show him the alley, please.) Now show the court exactly where those men were when you saw them at that time.—A. About here. (Witness indicates on map corner directly in rear of Leahy Hotel.)

Q. Those men were about there; were they? I want to know where those men were when you heard them firing while you were standing there 20 feet from that light?—A. I could not see them.

Q. I did not ask you if you saw them. You have already testified they were between Fourteenth and Fifteenth streets on the alley; now, whereabouts?—A. About here. (Indicated on map the corner of the Cowen side of the street.)

Q. You could not see them there?—A. Not to pick them out.

Q. How long did you stay there at that point where you cinched your horse?—A. Just two or three seconds—they came across.

Q. I asked you how long you stayed there at that point, 20 feet from the light, where you cinched your horse up. How long did you stay there?—A. I stayed there two or three seconds, perhaps.

Q. Two or three seconds?—A. Perhaps three or four, I don't recall; a very short time.

Q. Give us your best recollection.—A. Five or six seconds.

Q. Did you say seconds or minutes?—A. Seconds.

Q. Where did you go then?—A. I turned back toward Washington street.

Q. What else did you see in that five or six seconds?—A. After they crossed the alley I saw them and then I crossed to Thirteenth street.

Q. Come back, stay where you were. You stayed at that light five or six seconds and you cinched up your horse and heard the men firing in Cowen alley, between Fourteenth and Fifteenth streets. Now, what else did you see?—A. As I said, when they crossed I went in that five or six seconds.

Q. Who crossed?—A. Soldiers—Government soldiers.

Q. How do you know they were Government soldiers?—A. Because I saw them—saw them in uniform—and I could see the guns.

Q. Could you see the color of the men?—A. I could see they were dark—they looked dark at night.

Q. That's as close as you got to them at that time?—A. At that time; yes, sir.

Q. You were still in the light of that street lamp, were you not?—A. I was; with my back to the light.

Q. You got that way so the light would not impair your vision?—A. Yes, sir.

Q. Now, you saw these men cross the street; how many were there of them?—A. I saw 3 or 4 at a time.

Q. How many all together?—A. I seen 8 or 10 men go by and then I struck out.

Q. Did you mount again right there?—A. Yes, sir.

Q. And you did all that in this five or six seconds?—A. I remained there about six minutes—five or six seconds—as I said.

Q. But you dismounted and cinched up your horse and saw these men go across, and then you remounted in five or six seconds, is that so?—A. After I girthed the horse I got on horseback; I remained there about five or six seconds when they were crossing.

Q. You were looking toward them all the time?—A. Looking, naturally.

Q. Was your horse and yourself so you could see?—A. I was in the middle of the street, but they were running, making hardly no noise, running on tiptoe right across the alley.

Q. The men were running there, were they?—A. Yes, sir.

Q. All of them?—A. About 3 or 4 at a time.

Q. Now tell the court your best recollection of the whole number of soldiers you saw at that place.—A. About 8 or 9, I think.

Q. All together?—A. Yes, sir; about 4 at one time and 5 at the other time, more or less.

Q. Were these all very black men or were some of them what we call saddle-colored negroes?—A. No, sir; I could not describe them that much.

Q. Did they have hats on?—A. I know they were dark, and had uniform and hats.

Q. What kind of trousers did they have on?—A. Sort of a yellowish pants.

Q. Did they have on leggings or not?—A. I did not notice.

Q. Did you notice whether they had on tan shoes or black shoes?—A. I could not tell that, sir.

Q. Did you notice the shirts at that time?—A. I could see that some was dark and some had the yellow coats on.

Q. Some had yellow coats on and some had dark shirts on?—A. Yes, sir; might have been dark-blue clothes, but it looked like——

Q. Were they dark blue?—A. I could not swear they were blue, but they were dark.

Q. Now, how far were you? In the middle of that street (he is pointing to where you were on Washington street)? How far were you from the men as they crossed Fourteenth street there, going down the alley?—A. I was in the middle of the street.

Q. How far were you from the alley? What is that distance?—A. That's about 120 feet, I think.

Q. No light there, was there, at the crossing of the alley and Fourteenth street?—A. No, sir.

Q. Was this a bright moonlight night?—A. No, sir; it was no moonlight, but then it was not dark—the stars were out.

Q. You could not tell, then, if I understood you correctly, whether some of these negro soldiers were tan colored?—A. I could not tell you—I know they were dark in the face.

Q. You can't tell whether any of them were what we call mulattoes?—A. Real negro color?

Q. Could you tell whether his hair was kinky or straight hair?—A. I could see that they were sort of yellow hats, but I could not tell you how they were.

Q. Talking about hair.—A. No, sir; I could not.

Q. You couldn't tell whether he had kinky hair or straight hair?—A. No, sir; I couldn't.

Q. Did I understand you correctly to say those men were running across that alley?—A. Yes, sir.

Q. All were running, eh?—A. Four at a time.

Q. You testified in your direct examination that you saw them shoot into the Cowen house. Where were you when you saw them shoot into the Cowen house? Show us there.—A. I had passed already Thirteenth street.

Q. You had passed Thirteenth street when you saw them shoot into the Cowen house?—A. Yes; passed about half a block.

Q. Show us on the map, will you?—A. (Witness here indicates on map, on Washington street, midway between Thirteenth and Fourteenth.) When the shooting was going on in this direction.

Q. You saw them shoot into the Cowen house, did you?—A. No, sir; I heard the shooting in that direction.

Q. Now, you said in your direct examination, "When I got to Fourteenth street they got to shooting in the alley where Mr. Cowen's house is."—A. At the corner of Fourteenth street? I never did.

Q. That's my recollection, and that's what the stenographer says. Your question was this: "Q. The sound of the shots came from the reservation?—A. Yes, sir." That's the recorded evidence of yesterday, and as you gave it.—A. I don't recall giving such testimony as to I seen the party that was shooting Mr. Cowen's.

Q. Did you testify before Mr. Purdy?—A. I believe I did.

Q. And were you shown this evidence of yours all written out in typewriter after you had testified?—A. He asked me questions about it.

Q. Did you or did you not see this paper after it was written out?—A. Yes, sir.

Q. Did you sign it?—A. I did.

Q. Did you state in answer to a question, "Where were you located at that time?—A. I was on market, where the station is. Q. Where is that located?—A. In the center of the town, between Eleventh and Twelfth streets. (Then I omit a little.) When I got up by Mrs. Suder's I heard the shooting going on. When I got to Thirteenth street, on the corner, they had just got through shooting at Mr. Cowen's house and I stopped there for a moment, and then the shooting stopped and then they went across the alley." Did you so testify?—A. Yes, sir.

Q. Was that the truth?—A. Yes, sir.

Q. Then you did see them shooting at the Cowen house?—A. I did not see them. I made that remark because I was near by when I heard the shooting in the direction of Mr. Cowen's. I did not see the shooting.

Q. Then when you stated they were shooting at the Cowen house you did not know whether they were or not, is that true?—A. At the very moment they were shooting at the house; no, sir.

Q. Then you knew nothing about it of your own knowledge whether they were shooting at that house or not?—A. Nothing but the direction of where the shots were at, after I saw the soldiers go through the alley.

Q. When did you learn that these soldiers were actually shooting at the Cowen house?—A. I did not see them.

Q. When did you learn that these soldiers were actually shooting at the Cowen house?—A. It was because a policeman, when I was going near Fourteenth street, he met me and told me they were shooting at the Cowen house.

Q. Then you swore that was so because another policeman told you so, is that right?—A. No, sir.

Q. Didn't you say that was when you knew it?—A. He told me they were shooting at the Cowen house when I was close to Fourteenth street.

Q. But you didn't know anything about that of your own knowledge—you didn't see it?—A. I didn't see it; no, sir.

Q. You didn't know anything about it of your own knowledge, I mean?—A. No, sir.

Q. Then when you so testified here you were mistaken?—A. I would like to state to the court that I get so confused I don't know whether I am stating right or not.

Q. Were you so confused that night you didn't know?—A. I was when the shooting was going on.

Q. Yes; it seems so. You didn't know very well what was going on that night?—A. From what I heard, you know, that policeman told me, I knew.

Q. Then you were willing to swear it was so because one of your policemen told you so?—A. Because he told me at the very moment, in the moment or so I saw the soldiers go past the alley into the other alley.

Q. Were you at all confused when you saw these colored men running across the alley there, across Fourteenth street?—A. I was; because there was shooting going on.

Q. You didn't see any of them stop to shoot there at the Cowen house?—A. Not at the Cowen house.

Q. Nor anywhere near it?—A. Before that I heard shooting, you know.

Q. One minute. Did you see any of those men that you swear are negro soldiers, stop and shoot anywhere near the Cowen house? Yes or no?—A. No; I didn't see any.

Q. Then you don't know of your own knowledge, I ask you again, whether they shot at the Cowen house or not?—A. No, sir; because I didn't see them.

Q. Did you hear any volley firing there besides the one you pointed out was fired there?—A. Only the one that happened before.

Q. Did you hear any volley firing there besides the one you pointed out was fired there?—A. I do not understand you.

Q. (Question repeated.)—A. Not there.

Q. Where did you go to next?—A. From there I returned to Thirteenth street—Washington street, I mean; returned from Fourteenth street by Washington street. Returned from Fourteenth street to Thirteenth street.

Q. And then?—A. I turned on Thirteenth street toward the river.

Q. What gait did you go at?—A. Slow.

Q. In a walk?—A. Fast walk.

Q. All that distance, eh?—A. Yes, sir.

Q. And then you kept at that same gait, of a walk, down Thirteenth street?—A. Yes, sir.

Q. You were not confused at any of this time, or were you?—A. At that very moment I was.

Q. Did you change the gait of your horse at all before he was shot?—A. No, sir.

Q. He was going at a walk when he was shot?—A. Fast walk; yes.

Q. And where did your horse fall?—A. Right across Elizabeth street.

Q. Whereabouts? Show us on the map. Show us exactly where he fell on Elizabeth street.—A. I don't understand very well this map.

Q. That's very patent whenever you are in trouble.

(Map was explained to witness, and he indicated northwest corner of Elizabeth and Thirteenth streets, nearer the north corner.)

Q. Is that where your horse was when he was shot, or where he fell?—A. Yes, sir; this is the corner of Elizabeth street, and right across on this corner of the sidewalk is where he fell. (Shot on the north corner and fell on the west corner, across the street, as indicated on map by witness.)

Q. How close to the light was he when he fell?—A. Just across the street. About here is where the light was.

Q. How far from the light was the horse when he fell (for instance, the light was in this corner)?—A. I think it was about fifteen or twenty minutes from there—15 feet—from where the light was.

Q. Which side of the light was it? Was it on the garrison side of the light or on the other side of the light?—A. On the other side.

Q. Away from the garrison, then?—A. It is where Mr. Wreford's office is.

Q. Fifteen or 20 feet away from the light, then, and in the opposite direction from Fort Brown—away from Fort Brown, was it?—A. No; on the opposite side; it was just about a sitting door opposite Mr. Wreford's office. It is on the opposite side of Fort Brown.

Q. About two doors from the corner?—A. Two doors from Mr. Wreford's office.

Q. Which way did the horse fall? Did he fall toward the hotel or did he fall toward the garrison or away from the garrison?—A. No, sir; he fell right on the edge of the sidewalk of Mr. Wreford's office, on the opposite side of the reservation.

Q. Was the horse's head away from the garrison or toward the garrison?—A. No, sir; right on the sidewalk, across. For instance, here runs the street and the horse's neck was right here.

Q. Across Elizabeth street?—A. And the ditch, on the edge of the sidewalk, and there's where I was lying.

Q. You were lying, then, in the gutter?—A. In the gutter; but the horse's head was across the ditch.

Q. And his head pointed toward the Rio Grande River?—A. Toward Mr. Wreford's office.

Q. That's toward the river?—A. Well, yes; from there that is toward that way is toward the river.

Q. He was still going down Thirteenth street? He did not turn around and fall?—A. From the corner I was about 20 feet back this way toward the town. He fell there because he was stumbling.

Q. (Drawing on a piece of paper.) Here's the office here; here is the sidewalk. The horse fell with his head on the walk, and he was that way, was he, and you were lying with your head toward the garrison. Was your head toward the garrison, or in what direction?—A. Excuse me, I am not a very good geographic. (Witness draws on paper.) This is the river and this is the street, and this is Thirteenth street, so here is the corner, for instance, and right here is where Mr. Wreford's office is. The horse—I got shot on the corner, and it stumbled and came down here. Here is one, for instance—one door of the office—and this is the other door of Mr. Wreford's office. That's the best I could——

Q. Was he directly in front of Mr. Wreford's office?—A. Therefore my head was this way, right here.

Q. Your head was pointing directly across Elizabeth street?—A. My head was pointing just opposite Mr. Wreford's office, about 20 feet on this side of Mr. Wreford's.

Q. Here's your horse. Here you are sitting on him; did he fall this way, or how?—A. Over that way.

Q. Away from Thirteenth street, or toward Thirteenth street?—A. No; on Thirteenth street toward the river.

Q. How did the horse fall; on his left side or on his right side?—A. On this side.

Q. On the right side?—A. Yes, sir.

Q. You are sure of that?—A. Yes.

Q. Fell over to the right?—A. Because I recall I had this leg under the horse (indicating left leg). You are right, Colonel; it fell this way, and my left leg was under here, and my head here right in the direction of the sidewalk.

Q. And the horse's head was pointing toward Mr. Wreford's office, was it?—A. Yes, sir.

Q. How long do you calculate it took you to come from the corner of Fourteenth street and Washington around to where your horse was shot; you made all that distance at a walk?—A. How long?

Q. Yes.—A. I could not tell you, sir; I was excited, and I could not state exactly how many minutes it would take me.

Q. We did not ask exactly; we would like to know your best recollection though.—A. I could not tell the time; perhaps, you know, in the gait I was going, just a walk, perhaps, you know, in about eight minutes, ten minutes, more or less; I could not tell exactly.

Q. Where were you when you first saw some soldiers after you turned to go back from Fourteenth street and pass over this distance we are just speaking of?—A. Where did I see them first?

Q. Where were you when you again saw soldiers, after you left the corner of Fourteenth street and Washington street and turned and walked your horse back there, back to Thirteenth street? Where were you exactly?—A. When I saw them, when I passed the alley on Thirteenth street.

Q. You did not see them then until you had gotten clear around to the alley on Thirteenth street?—A. When I crossed the alley across——

Q. How many men did you see there?—A. There were about 15 or 20, more or less; I could not count them.

Q. Locate them for me; tell me exactly where they were. Were they all in a bunch or where were they?—A. On files, two files, one on each side of the alley.

The court then, at 12 o'clock m., adjourned to meet at 10 o'clock a. m. Monday, February 11, 1907.

CHAS. E. HAY, Jr.,
Captain, Acting Judge-Advocate, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., February 11, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocates. The accused, his counsels, and the reporter were also present.

The reading of the proceedings of February 9 was dispensed with.

M. Y. DOMINGUEZ again appeared before the court, was reminded he was still under oath, and testified as follows:

CONTINUATION CROSS-EXAMINATION.

Q. Is there a fence around or touching the Miller Hotel?—A. Fence? No, sir; not by the alley.

Q. Is there a fence around or touching the Miller Hotel?—A. Not by the alley.

Q. Is there a fence with a gate in it anywhere near the Miller Hotel, either on the alley or off the alley?—A. No, sir.

Q. Then why did you testify in the examination before Mr. Purdy anything about the gate at the Miller Hotel?—A. There is a gate at the Miller Hotel in the alley.

Q. Gate to what?—A. Miller Hotel.

Q. How far from the corner of the Miller Hotel—that is, the corner on Thirteenth street and the alley—is this gate? How far from the corner is it?—A. It is from the middle of Thirteenth street to where the gate is, more or less, it is 25 feet.

Q. The distance we called for is from the corner of the Miller Hotel itself on the alley. How far is it from the corner of that building to the gate?—A. From the gate to the corner of where the building is—of Thirteenth street—it is about 20 feet, more or less.

Q. Go and show us on the map where it is, please.—A. I am not a very good geographer.

Q. (Indicates Miller Hotel to witness on map.) Is it in the building or is it in the back of the building? From that corner there how far is it to the gate? Put your hand on the gate.—A. About here.

Q. It opens right into the building, then, does it?—A. It is an open gate.

Q. Does it open into the building itself, or does it open into the yard of the building?—A. I don't recollect, sir.

Q. How long has that hotel been built?—A. Many years.

Q. And you have been living there as a policeman for twenty-five years, you stated.—A. Because it is always open; always is open. It is the gate they use to take out the scavenger, and things like that.

Q. And you don't know whether that opens directly into the yard of the place or whether it opens into the building itself?—A. No, sir.

Q. Have you ever been by that building on that alley?—A. I have passed, not very often, at night—just passed—but I never noticed, as it is an alley that is not very passable by the people.

Q. Was the gate open or shut the night in question, when these soldiers were there?—A. I don't recollect, sir, because I did not go in the alley.

Q. Why did you mention this gate at all in your evidence if you did not see it and did not notice it?—A. Because it is a gate there; it is constantly there; it is a gate.

Q. Now, when you left Fourteenth street and walked your horse down Washington and then turned down Thirteenth and when you got to the alley and were crossing the alley you said a volley was fired at you. Is that correct?—A. I heard a word first and immediately after that a volley.

Q. Exactly where were you when the volley was fired?—A. As I crossed the alley.

Q. Were you nearer the King house or the Miller Hotel?—A. It was more inclined to the Miller Hotel side.

Q. What were these men doing that fired the volley?—A. There were one file on each side of the alley.

Q. What were they doing?—A. When they fired the volley?

Q. What were they doing?—A. Moving.

Q. At what gait; how rapidly?—A. From Miller Hotel?

Q. Were they running or walking or trotting, or what?—A. Walk.

Q. In single file?—A. It was a volley fire.

Q. Were they walking in single file, one behind the other, or how?—A. It was one behind the other, more or less.

Q. Tell the court; we want to know; not more or less; we want to know. Were those men one behind the other in files or not? That's what you have testified to.—A. They were on both sides of the alley, and they were in single file, one behind the other.

Q. One behind the other, eh?—A. More or less; I could not say exactly; a straight line.

Q. But they were not two or three abreast?—A. No, sir.

Q. Only one abreast, eh?—A. Yes, sir.

Q. On either side of the street?—A. Yes, sir.

Q. How far was the leading man of each file from the corner when you first saw them?—A. I could not tell you.

Q. We want your best judgment, because you recognized them there, didn't you?—A. I passed by at a fast walk, and I could not identify them, who was in front or not.

Q. You could not exactly identify who was in front; is that what I understood you to say?—A. I could see they were soldiers.

Q. But you say you could not identify who was in front?—A. I could not identify which man was in front; I know it was a soldier.

Q. How far was this leading man from you?—A. From me? They must have been 20 or 25 feet.

Q. Were they opposite the gate?—A. When they fired?

Q. Were these men opposite the gate you testified to in your direct examination?—A. About the gate.

Q. Were they or were they not opposite this gate?—A. Only one file was right where the gate was.

Q. Where was the other one?—A. On the opposite side.

Q. Were they abreast of each other or one ahead of the other?—A. One behind the other in file.

Q. There was two files, one on each side of the alley?—A. One on each side.

Q. The one on the Miller side was right opposite to the gate?—A. Yes, sir.

Q. And the one on the other side was where?—A. Right opposite the other.

Q. Were they abreast of each other? Now, you testified on last Saturday, in answer to the judge-advocate, as follows: "Q. Tell

again what you saw from the corner.—A. From the corner of Washington street I saw some Government soldiers coming across the alley near Mr. Cowen's house. When they came across the alley I came down toward Miller Hotel and the alley, and when they got about 25 feet in the alley, about 25 feet from the gate of the Miller Hotel, in the alley, I was going down Elizabeth street." That's correct is it?—A. When I was passing the alley?

Q. Is that testimony correct or not? Yes or no. I will read it again. The part I am particularly anxious about is this: "I came down toward Miller Hotel and the alley, and when they got to about 25 feet in the alley, about 25 feet from the gate of the Miller Hotel, in the alley, I was going down Elizabeth street." Is that correct or not?—A. In the alley?

Q. Can you read?—A. I can read a little.

Q. With the permission of the court, I would like the witness to read his own answer; I don't want to confuse him. I want his best judgment as to these facts; we are entitled to it, and if he can read English we want him to tell us this. This is a transcript of the record that has been furnished us in due course. There is the question right there and here is the answer.

(Witness reads.)

Q. That's the only question we are interested in. Have you read it?—A. Yes, sir.

Q. Do you understand it?—A. Yes, sir.

Q. Is that correct or not? Yes or no.—A. I did pass by.

Q. Is that answer correct or not?—A. As I passed the alley, it is so; as I passed the alley toward Elizabeth street.

Q. Then as you passed the alley at Elizabeth street it is correct that those men were 25 feet from that gate?—A. As I passed?

Q. Were they or were they not 25 feet from that gate? That's what you said Saturday, I want to know whether you are going to stick to it or not?—A. As I was riding on horseback, yes.

Q. Were they or were they not?—A. To where I was, yes, it is 25 feet.

Q. Then when you said they were 25 feet from the gate, they were not 25 feet from the gate?—A. On the street, yes; but from the building to the gate it is about 25 feet.

Q. Didn't you say here they were 25 feet from the gate? Yes or no.—A. Yes, sir.

Q. Were they 25 feet from that gate or not?—A. Yes, sir.

Q. The men were?—A. Yes, sir.

Q. Now, where were they then? This morning you testified they were abreast of the gate; Saturday you said they were 25 feet from the gate; now tell this court; that's what we want to know.—A. They were by the gate, one on each side of the building.

Q. How far were they from you?—A. About 25 feet.

Q. And yet you don't know whether that gate enters into the house or into the courtyard?—A. I make the rounds; I never go through alleys; I just take the streets.

Q. How did you happen to see that gate that night?—A. Because it is a large gate.

Q. What color is it?—A. It is painted, sir, sort of a dark green. It is almost washed; it has not been painted for a long time; I can't exactly make an explanation of what color it is.

Q. Dark color, is it?—A. It looks dark.

Q. Was there any light in that gate at night?—A. No, sir; there is no street in the alley.

Q. I asked you if there was a light in or near that gate?—A. No, sir.

Q. Was there any light in the alley at all?—A. Inside the alley there is not.

Q. Is there any house on the opposite side of the alley from Miller Hotel?—A. There is a brick building—Mr. Bolack's.

Q. Does that come right out to the alley?—A. Yes, sir; it is a brick, built right up.

Q. To the corner?—A. Yes, sir.

Q. And the Miller Hotel is built up to the corner?—A. Yes, sir.

Q. And this was a reasonably dark night?—A. It was a clear night; it was not moonlight, but it was a clear night.

Q. Was it bright or dark?—A. It was a clear light.

Q. I think you said the street lamps—one was on the corner of Washington and the other on the corner of Elizabeth street; that's correct, is it?—A. Yes, sir.

Q. What kind of illuminating material do they use? Coal oil?—A. Yes, sir.

Q. So you had two coal-oil lamps, one on the corner of Washington and one on the corner of Elizabeth?—A. Yes, sir.

Q. And I believe you said, you testified, you saw these men by the assistance of these lights, one on the corner of Washington and one on the corner of Elizabeth. Did you or did you not so testify?—A. On the street; yes, sir.

Q. Is it so?—A. Yes, sir.

Q. Then, will you tell this court how it is, with a three-story building on one corner and a brick building on the other corner, you could get the advantage of an artificial light half block away, which could not, by any possibility, shine on these men?—A. It was clear enough to recognize them.

Q. Then you did recognize those men by the natural light instead of the artificial light?—A. In the alley; yes, sir.

Q. Then when you said to this court last Saturday that you recognized them by means of the artificial light, you were mistaken?—A. I am not mistaken.

Q. Which light did you recognize them by?—A. On the Thirteenth street side I could more plainly see by the two lights.

Q. I am talking about the alley; how did you recognize them? By the artificial light in the alley?—A. In the alley it was not necessary.

Q. It was not possible, was it, to see these men in the alley by artificial light?—A. I could see them plainly; it was a clear, light night. As I have stated, I could see them plainly to recognize them in that distance.

Q. I wish you would show the court about how far these men were from you. Show us in the court room.—A. When?

Q. When they fired that volley at you as you were crossing the alley on Thirteenth street.—A. About 25 feet.

Q. Show us; we want to know.—A. As far, where the United States flag is to where the other United States flag is, more or less.

Q. Then from that flag there to that flag back there is as near the

distance as you can give?—A. About 25 feet, more or less; it might be less; I have not counted; just judge.

Q. And you saw them by the assistance of the natural light, natural starlight night? That night between these two houses?—A. In the alley, yes, sir; because it was a clear night. The stars were all out, and it was not dark; there was no cloud at all; it was a clear, light night.

Q. Now, you walked along after this volley was fired there—only one volley fired at you while you were in that crossing of Thirteenth street and the alley. Is that correct?—A. I was crossing the alley.

Q. What I want to know is this: Was there one or more volleys fired at you while you were on the alley on Thirteenth street while you were making that crossing?—A. Only one volley.

Q. Where were you when the next shots were fired at you?—A. I was about 40 feet, I think, 40 or 50 feet.

Q. Forty or 50 feet from where?—A. From the gate to the corner of the alley to Thirteenth street.

Q. But you had gotten by the corner of the Miller Hotel or not, down Elizabeth street?—A. No, sir; not yet.

Q. Then you were still in the crossing then?—A. I had passed. I don't understand.

Q. This is very important, and we want your best recollection. You were right in there where his pointer is, where the alley crosses Thirteenth street; when the first volley was fired you were moving along at a walk toward Elizabeth street. Is that correct?—A. Yes, sir.

Q. Was there more than one volley fired at you when you were in that crossing?—A. No, sir.

Q. Where were you when the next volley was fired?—A. Down toward Elizabeth street.

Q. About how far from the corner of Miller Hotel? How far down that street had you come?—A. About 40 feet, more or less.

Q. Did these men come on up to the corner in the meantime?—A. They came out.

Q. I mean from the alley? You said that when they fired the first volley they were in the alley.—A. Yes, sir.

Q. Where were they when they fired the second volley? Did they come on up to the crossing?—A. They had come out.

Q. In open view, eh? About where were they when they fired the next volley—the men themselves?—A. They must have fired at the corner, just as they come out on Thirteenth street, going toward Elizabeth.

Q. You showed us last Saturday the position in which you were when these men there fired at you. When did you assume that position—whereabouts were you?—A. After the volley was fired at me I always kept my head, my face backward. There is danger of a man losing his eyesight where the danger is.

Q. Now, what I want to know exactly is, where were you when you turned and looked over your left shoulder toward these men? Whereabouts were you?—A. Just as I passed the alley I had my face backward.

Q. Then, did you ride that way until your horse fell?—A. Yes, sir.

Q. Will you show us again how you rode? Just what position you assumed.—A. In what position I was?

Q. Yes; exactly. Show us how you held your bridle. I want you to assume this chair is the Miller Hotel and this the corner. You were going down that way toward Elizabeth street and the men were behind you, as you said. Now, show us how you were.—A. On my stirrups this way; turned back this way.

Q. And you rode in that position until you fell from your horse?—A. From when I got shot; then I didn't look back.

Q. Just where did you get shot?—A. At the corner of Elizabeth street, or on this side of the street, right on the corner.

Q. Then you were away from the alley?—A. Yes, sir; I had passed already.

Q. But you were in Elizabeth street when you were shot?—A. No, sir; just as I approached the corner of Elizabeth street. For instance, Elizabeth street runs across like this, and as I got on the street right here in this position, and when I got shot my arm fell and the reins fell, and I took them with the other hand like this, and the horse stumbled, and I kept on across the street and fell.

Q. After you were shot there was an interval when you had to look at your horse?—A. No, sir; I was looking to see if I would not fall under the horse.

Q. You stated that you turned and grabbed the reins with your left hand; that is, when you felt the rein fall out of your right hand?—A. Yes, sir.

Q. You received the shot right at the corner of Elizabeth street and Thirteenth?—A. As I approached the corner of Elizabeth street at the corner, but away from the corner. Right at the corner my intention was to turn this way.

Q. But you had not turned yet?—A. I had not turned yet.

Q. You were going to turn to the right?—A. Yes.

Q. You were looking back when you got shot?—A. No, sir.

Q. What were you doing?—A. When I got shot my reins dropped and I got hold this way.

Q. You were sitting this way when you were actually shot?—A. Yes, sir.

Q. Then you immediately looked around and grabbed the horse; is that correct?—A. Yes, sir.

Q. Where were these soldiers at this time?—A. In two files, one on each side of the building—one on the Miller Hotel and one on the King Building side.

Q. Were they in files or were they abreast of each other?—A. One behind the other.

Q. Had one file of them, as you say, of eight or ten men coming down the sidewalk on that—— A. On the King side; one on the other side.

Q. How far down that street had they come, the farthest point they came down Thirteenth street?—A. About 60 feet from the corner of the alley.

Q. And that left them how far from you?—A. Sixty feet, more or less.

Q. Then that's approximately 120 feet from the alley to Elizabeth street?—A. Yes, sir.

Q. Then your horse stumbled on across and you turned him a little inside Elizabeth street, did you, so that he fell in front of Mr. Wreford's office?—A. Yes.

Q. When did he commence to show he was shot?—A. Just as soon as we arrived by the Wreford sidewalk he fell.

Q. Did you notice he was shot before that?—A. I noticed he was wounded, because he was trying to lie down and I lifted him up; held him by the reins that way.

Q. How long after you were shot was it before you first noticed these men tiptoeing back toward the alley?—A. Immediately, just after they came out they went tiptoeing.

Q. Now, how were these men moving from the time they came into Thirteenth street until they started to tiptoe back? What gait were they at?—A. They were walking fast, but not trotting; just walking fast.

Q. Were they tiptoeing as they came down toward you or only when they started back?—A. When they turned back?

Q. Yes.—A. Tiptoeing, making hardly any noise.

Q. Were they not making considerable noise with their guns?—A. Yes; I could see the flash of the guns.

Q. Didn't the shooting keep up after you fell?—A. After I fell they gave a volley and when I was down, struggling to get my leg from under the horse, another volley was fired; I suppose they thought I was killed and they returned back.

Q. But they wanted to make a sure thing of it and fired another volley at you while you were down?—A. While I was down; yes.

Q. Where did those shots go?—A. By Mr. Wreford's.

Q. Did you see any of them hit?—A. No; because I was sick in bed for a month.

Q. Have you ever seen them?—A. No.

Q. You don't know, then, of your own knowledge, whether they hit or not—whether this volley that was fired was fired at you, do you?—A. Yes.

Q. Did you see the men pointing their guns in your direction, after you were lying down? We are talking about, did you or did you not, at that time see the men shooting at you?—A. While I was down, no.

Q. Did you not so testify in your direct examination, that after you were lying down they fired a volley at you, while you were still down? Did you or did you not so testify?—A. Yes, sir.

Q. Was it true or not?—A. It was true, because the volley that was fired before that it was immediately after that, and there was nobody else in that direction.

Q. I will ask you again. Do you know of your own knowledge, after your horse fell down with you and you were lying down there, that these men actually fired another volley at you?—A. Yes; yes, I do.

Q. How do you know it?—A. Because the volley fired immediately after this volley was in the same direction that was fired by me.

Q. How do you know?—A. Because they were fired at me.

Q. How do you know?—A. Because my horse was shot.

Q. Did you see your horse hit at that time, while you were still lying down?—A. The horse had a shot in his head.

Q. While you were still lying down?—A. When I got up.

Q. Was that shot in his head while you were lying down?—A. Yes, sir.

Q. You are sure of that?—A. Yes, sir.

Q. Then, why did you say awhile ago that you didn't see any of those shots hit?—A. I mean the house I did not see hit, but I saw the horse.

Q. While you were lying down there, you actually saw your horse hit?—A. Yes, sir; because he raised up his head and then it fell; he throwed his head down to the sidewalk.

Q. Whereabouts on the head did it hit him?—A. Behind the ear (indicating left ear).

Q. While his head was still lying on the sidewalk?—A. Yes, sir.

Q. Is that the only one of those volleys you saw fired while you were lying down that you saw hit?—A. Yes; the last volley; yes.

Q. Did you ever tell anybody else that before, about that hitting your horse at that time?—A. No, sir.

Q. Why did you think of it now?—A. I never was asked, but I spoke about it, about the shooting at me.

Q. What made your horse fall?—A. The first shot.

Q. Where did that hit him?—A. I could not tell you where, but I knew afterwards, you know, that it was hit right under the leather of my saddle.

Q. Was that the only shot that hit him before he fell?—A. When he stumbled?

Q. Was that the only shot that hit him when he fell?—A. It was in the head, afterwards, when he was lying down.

Q. But, before your horse fell down, is the shot that went under your leather there the only shot that hit him? Yes or no.—A. I suppose so.

Q. Do you know?—A. Yes, more or less, I know it was, of course, for if he had been hit in the head he never would have moved from there; he never would have made a move.

Q. Are those the only two shots you saw in your horse?—A. Yes, sir; that night.

Q. You saw both of these that night?—A. I could see one.

Q. You saw both of these that night?—A. The one in the head plainly.

Q. Did you or did you not see the other shot?—A. The other shot afterwards.

Q. When did you see the other shot?—A. When I seen the saddle brought there at home, where the bullet had entered the stirrup.

Q. On which side was that?—A. On this side.

Q. On your left side, the same side he fell over onto?—A. Yes, sir.

Q. Then because your sweat leather was hit you say he was hit under the side there?—A. They examined the horse afterwards.

Q. What did you see?—A. No, sir.

Q. You didn't see?—A. No, sir.

Q. The only shot you actually saw was the one in his head?—A. That one; yes, sir.

Q. You actually saw that hit him, did you?—A. Yes, sir.

Q. You didn't see these soldiers pointing their guns at you at that time?—A. Not while I was down, but when they were firing first I did see them.

Q. Then you testified on direct examination: "Q. After you fell with your horse, what did you do then?—A. I had this leg under the horse, and while he was struggling I was trying to get off from the horse, and at last with this foot I slid myself from under the horse,

and while I was down they fired another volley at me. Q. Did any of these shots take effect in you or the horse?—A. Not to me. Might have been to the horse, but I didn't notice it." Now, which is the truth, the answer you made on your direct examination or this positive answer that you saw the horse hit in the head?—A. Both.

Q. Both true, eh?—A. Both true; yes, sir; because my testimony was that the horse was shot by the same party that shot me.

Q. You stated positively on direct examination that this other volley, that you now swear one of them hit your horse's head, that it didn't hit you, but it might have hit your horse, you didn't notice. Now, which is true; that you didn't notice the shot or did notice it?—A. When?

Q. When you said it hit your horse when you were lying down. You have sworn to this court that you didn't see your horse shot in the head when you were lying down, and you just testified that you did see him shot. Now, which is true?—A. I noticed that it was shot, you know, when I saw that shot.

Q. Which was the truth? They can't both be the truth. Didn't you just testify that when you were lying down there with your horse and these men fired a volley at you that you saw one of these shots hit your horse on the head?—A. Must have been one of them.

Q. Didn't you testify that you saw a shot hit your horse on the head?—A. While I was down; yes.

Q. Then you testified Saturday that you didn't see any shot hit your horse; was that true? That if any shot from this volley struck your horse you didn't see it.—A. I can't understand you, Colonel Glenn.

Q. Evidently not.—A. I know when I was shot in the arm the horse stumbled, and it is my belief the horse was wounded, and I held him by the reins until he fell across the street. And while I was down and when I got up I saw the horse was hit in the head, because it was blood all over the ear.

Q. Then you don't know whether that shot hit your horse while you were down or when you got up?—A. I saw it after I got up.

Q. Did you testify Saturday that you didn't see whether any shot hit him or not at that time?—A. I never was asked.

Q. But you were asked Saturday and you stated positively that you did not; that's the point.—A. That's if I didn't see him shot, because the horse was stumbling. You had not asked me that day which side was the horse shot.

Q. Do you use glasses for distance, for looking off at a distance?—A. No, sir; only to write small print, or else the line where I write.

Q. How long have you been using them?—A. About two years at least, but outside of that I can see better at a distance than glasses. I can see better at a distance.

Q. As a matter of fact, did you have your glasses on that night?—A. I never wear only when I want to write, because I don't like to get myself in the practice of using glasses only in the moment of writing.

Q. As a matter of fact, without your glasses you couldn't have seen a bullet hole that close when you were lying down, could you, on your horse?—A. Without glasses?

Q. Of a dark, starlight night?—A. Yes; I could see better without the glasses.

Q. Can't you see better on a dark, starlight night than you can in the daytime?—A. Yes, sir; I can.

Q. I thought so. When did you first see these men tiptoeing back toward the alley?—A. I heard them, you know; I could hear them from Washington street stumbling on the brick or something; I could hear noise.

Q. Where were you when you heard that?—A. On Washington street.

Q. No; I am talking about after your horse fell down with you, don't you know? Now, you said you saw them tiptoeing back, do you know when that was?—A. When I got up.

Q. Now, how long did it take you to get out from underneath your horse?—A. Didn't take me a long time; it was only twice the horse raised his head and died and I made strong efforts to get out from under him; the first time he raised his head I tried to get out from under and couldn't, and the next time he raised his head I pulled my heel from under and got off and got out on the sidewalk, and turned right around.

Q. How long was it from the time you fell there until you got up on the sidewalk?—A. It took me, I reckon, about eight or ten minutes to the most—I mean eight or ten seconds—at the most.

Q. Where were the men exactly with respect to the corner and the Miller Hotel when you saw them tiptoeing back?—A. About 40 or 50 feet from where I was.

Q. When they were closer to Elizabeth street than they were to the alley?—A. To the alley; yes, sir.

Q. Then, Elizabeth street is about 60 feet wide, is it not?—A. I have no idea, I suppose a very wide street.

Q. And you were on the opposite side of Elizabeth street from the Miller Hotel, on the sidewalk by Mr. Wreford's, were you, or were you not?—A. I was.

Q. Then you were the width of Elizabeth street and 40 feet from these men; is that correct? They were 40 feet from the corner of Elizabeth street you said.—A. From the side, or do you mean from the building?

Q. I am talking—from the corner of Elizabeth street.—A. You mean from where I saw them?

Q. When you were standing on the sidewalk at Mr. Wreford's you said you saw these men tiptoeing back; I asked you how far they were from Elizabeth street, and you said about 40 feet——A. Well, excuse me; from where I was, including the width of the street—I don't know how wide it is, it might be 50 feet or 60—but I mean from the corner of King's, but including the feet of the street and from where they were, including the 40 feet, it must have been 100 feet.

Q. They were about 100 feet from you, which would make them about 40 feet from the corner of Elizabeth street?—A. King's Building and Elizabeth street.

Q. How long did you stay there?—A. Just a second, you know; not a second, but say two or three seconds, you know.

Q. Did they get back into the alley before you left that place?—A. They got back afterwards.

Q. While you were still there at Mr. Wreford's?—A. When I was standing up; yes.

Q. Which way did they turn, to the right or left?—A. As you go to the alley?

Q. Yes; you were looking at the alley, were you not, toward the alley?—A. Yes.

Q. Did they turn to your right or left?—A. To the left.

Q. You could see them there?—A. Then, you know, I could see just the uniforms, that they were soldiers in uniform.

Q. They must have been, then, the whole half block and the width of Elizabeth street from you when you saw them there, weren't they?—A. They were about 60 feet; then they had returned back from where I saw them.

Q. Back up to the alley there?—A. Yes.

Q. And you were still down at Mr. Wreford's?—A. When they got to the alley; yes.

Q. And you saw them turn and go that way?—A. They turned to the left side.

Q. And did you see them any more?—A. No, sir; I turned to the drug store and I don't know whether they turned to the left or right. I saw them go in there, as far as the alley to the left.

Q. Did you hear any shooting after that?—A. Yes, sir.

Q. Whereabouts was this shooting?—A. When I heard that shooting it was when I was going to the drug store. Just as I passed a lamp that hangs on the sidewalk of Mr. Crixell's barroom—it is opposite the room where that French boy was shot—I heard some shots fired in the alley, and after that I don't know anything.

Q. You don't know whether they were in the alley or not?—A. They were in that direction. In that direction, back of the Ruby Saloon; that's all I know.

Q. Didn't you say Mr. Wreford's house was two doors from the corner?—A. From where the horse fell; yes, two doors.

Q. When you were standing at Mr. Wreford's place on the sidewalk you said you saw those files of men go back up to the alley and turn to your left; is that correct?—A. To the left.

Q. Did you see both files? That is the one that was on the King house side of the street and the one that was on the Miller Hotel side? You could see them both?—A. I could see both, yes; then they were moving when they were going back across from the Miller Hotel to the King Building. They got together before they got to the alley.

Q. So that that file on the Miller street side crossed over to the King house side of the street and all joined together?—A. All joined together before they got to the alley.

Q. Did they all go mto one file or two abreast?—A. All scattered

Q. Did it occur to you that it might be a little difficult to see around that corner there? You were two doors from the corner. Will you tell me how you could see around that corner and see up to the other corner?—A. Which corner?

Q. You see where his pointer is. You were two doors in from the Elizabeth street corner and Thirteenth street. Do you see where that red star is? You were two doors away from that.—A. From the Wreford?

Q. Wreford's door is two doors away, and you saw these men turn to the left after they joined from the King street side.—A. I could see.

Q. Did it ever strike you that it was somewhat difficult to see around a corner?—A. Oh, I can see.

Q. Around a corner on a dark night?—A. From there I can see lengthwise of the building—of the King Building. They were in the length from Wreford to the King Building.

Q. You can see my pointer here, can you?—A. Yes, sir.

Q. If I remember correctly, you stated that you stood, when you first came from the market, about the middle of this street (indicating on the map).—A. On Washington street.

Q. This is the corner of Washington and Fourteenth.—A. Yes, sir.

Q. And that you saw some men, some colored soldiers running across Fourteenth street at the alley. Is that correct?—A. Yes, sir.

Q. You so testified?—A. Yes, sir.

Q. How long did these men keep up that run?—A. They passed in a hurry.

Q. How long did they continue to run?—A. I just saw them in fours, you know; they went across fast. I could not tell you how many seconds or anything like that.

Q. Why didn't you tell Mr. Purdy that you recognized these men at this place?—A. He never asked me anything.

Q. Didn't he ask you to tell what you knew about it?—A. I don't recollect about him telling. If he did, I don't recollect.

Q. You didn't tell him anything about the crossing of the alley at Fourteenth street at all, did you?—A. Perhaps I did.

Q. You don't know whether you did or not?—A. I don't recollect, but it might have been if I was asked; perhaps I did.

Q. Is your recollection of this other evidence as acute as what you told Mr. Purdy?—A. Oh, yes; because I got hurt is why I recall all that.

Q. As a matter of fact, you did not tell Mr. Purdy anything about that?—A. What?

Q. About your having seen men cross the alley there at Fourteenth street?—A. I believe I did.

Q. If the record fails to show it, who is right, you or the record?—A. Whatever I say is the God's truth, sir.

Q. Yes; I believe that.—A. You may be criticising me, but it is so.

Q. I have searched that record very carefully and the only alley crossing you speak of in that record is when you crossed Thirteenth street, and is it not a fact that Mr. Purdy asked you this question: "Q. That is all you know about the affair?" and you answered, "Yes, sir." Isn't that true?—A. About the affair?

Q. Yes.—A. What I told Mr. Purdy is the truth; yes, sir.

Q. Oh, I came near forgetting. Do you remember you testified that when you went by the Miller Hotel you commenced hollering?—A. I called to the people in the hotel.

Q. You said you commenced hollering.—A. Yes.

Q. What did you say?—A. "Wake up, people, the negro soldiers are out shooting houses and killing people." That's what I said.

Q. How many times did you repeat that?—A. Four or three times.

Q. Was that all you said?—A. That's all.

Q. You didn't think it was necessary to speak to anybody except the people in the Miller Hotel?—A. Yes, sir.

Q. Who else did you speak to?—A. To nobody.

Q. Then you didn't do all your duty that night. You didn't notify everybody, did you?—A. I did not, because I was shot down. I woke up all the people I could, as far as I was shot and my horse.

Q. All these soldiers the same color?—A. They were right black men, and the uniforms and the guns, and the flash of the shooting, I could see plain enough they were negro soldiers.

Q. Was not any saddle-colored negroes among them?—A. Might have been.

Q. Did any of them have freckles on their faces?—A. I was not inspecting them, Colonel.

Q. Was not looking for freckles, eh?—A. No, sir.

Q. You were looking pretty close to see who was shooting at you?—A. I was looking, naturally, at the people shooting at me, I was——

Q. What is the color of the uniform worn by the police of Brownsville?—A. This kind of clothes, dark blue clothing, and in summer uniform like khaki.

Q. The police in the city of Brownsville wear a khaki uniform in summer, do they?—A. Yes, sir.

Q. And what kind of hat?—A. This kind of hat (indicating own hat similar to campaign hat, but larger).

Q. Could you see the color of the hats of these men you say were soldiers?—A. Soldiers, yes.

Q. Was that different from the color of the hat you have on?—A. It looked like it, the color.

Q. Did it look different?—A. No, sir.

Q. Looked just the same as that?—A. Yes.

Q. Could you see the cord on it?—A. I could not take much notice of that; I could see they had the soldiers' uniforms and the guns when they were firing.

Q. Could you see the gun itself?—A. I could see the flash and I could see plain the guns.

Q. Could you see them without the assistance of the flash?—A. I could; it was a clear, light night, and I could see plain they had guns.

Q. Was there any moon at all that night?—A. No, sir.

Q. When did you first see they had guns—not by the flash, but the guns themselves?—A. Between the entrance of the alley and the Miller Hotel.

Q. You didn't see the guns in their hands, then, when they crossed the alley at Fourteenth street?—A. No, sir.

Q. You could not see they had guns, then?—A. I could not see very well; I could see just the dark objects like the soldiers.

Q. But you knew they were soldiers when they crossed Fourteenth street?—A. Yes, sir.

Q. What's the difference in the color of the uniform of the police and the uniform of these soldiers?—A. The same color.

Q. Then you could not distinguish that color at that distance on this starlight night?—A. I could.

Q. I am talking about when you stood at the corner of Washington and Fourteenth streets and when these colored soldiers crossed Fourteenth street on the alley. Could you distinguish the difference between the khaki worn by the soldiers and the khaki worn by the police at Brownsville at that same time—could you or could you not?—A. I could; yes, sir.

Q. I agree with you, sir, that your vision on a dark starlight night is extremely acute.—A. Because the policemen wear the same color of khaki, but the badge is exposed outside, so any citizen can see it.

Q. Could you see the badge at that distance?—A. Yes, sir; it is white.

Q. With a man running with his side toward you—could you see the badge on his chest at that distance?—A. What distance?

Q. From the corner of Fourteenth street and Washington street. You told this court you could tell they were not policemen because they had no badges on them.—A. If it had a badge I could, sir.

Q. You could have seen it?—A. Yes, sir.

Q. Remarkably acute vision. That must have been at least 120 feet, isn't it?—A. That's all it is.

Q. Could you see these men were colored at that time—that is, that they were negroes?—A. Looked like it, right on the alley between Washington and Elizabeth from Fourteenth street.

Q. You identified them first there as negro soldiers?—A. There I could not very well, as you spoke to me yesterday if they had wool. I could not testify as to that, but as to the uniform I could see they were soldiers.

Q. Have you ever seen a negro we call saddle colored or tan colored—a mulatto?—A. Yes, sir.

Q. Have you not seen Mexicans as dark as that negro?—A. Yes, sir.

Q. Could you distinguish whether there were any that color among them?—A. There I could not, but on Thirteenth street I could very plainly.

Q. I am talking about when you first identified them as negro soldiers, when they were in the alley at Thirteenth street, near the Miller Hotel.—A. Yes, sir; I could.

Q. You could tell whether there were any mulattoes among them at that place?—A. There I could see they were all black.

Q. You are sure there were no mulattoes?—A. I did not see any light-brown man.

Q. You would have seen them had they been there?—A. I could.

Q. Then you must have been very positive in your own mind that every negro that was there that night was very black.—A. There must have been, because they all had black color.

Q. You could not see the dents in their hats, could you?—A. No, I could not; I could not take very much trouble. A person receiving a shot at night, he is not very——

Q. But you had not received a shot at that time.—A. I was about, but I did not expect to live very much longer. I went there with the purpose of saving the people, men and women and children, in the Miller Hotel, to die to save the women from all parts of the United States there.

Q. What's that street that you call Fifteenth street that runs along the garrison wall—what's that street familiarly known as in Brownsville?—A. I don't know; I know it by the name of Fifteenth street.

Q. Did you ever hear it called the firing line?—A. The soldiers call it—lately I have heard that name mentioned.

Q. Hasn't that been known as the firing line before these soldiers, colored, came there?—A. I never heard it.

Q. You never heard it before?—A. I heard it after the time that Private Baker shot me; if that is when I heard that firing line mentioned, I never heard it before.

Q. Have you known it ever since this man Baker shot you that it was called the firing line?—A. Yes, sir.

Q. Then you have known it for over two years to be called the firing line?—A. I have sometimes heard soldiers speak of it as the firing line.

Q. That's the general name it is known by, isn't it?—A. Among the soldiers that is it. That is Sixteenth street, but not Fifteenth street.

Q. Let's don't have any confusion about this. The street I am talking about is the street that runs along back of the garrison, there by the garrison wall; that's known as the firing line, is it?—A. They call it Sixteenth street; I don't know.

Q. Is it, or not, known as the firing line?—A. On the lower end of town by the garrison it is called the firing line.

Q. That's what I wanted to know; a simple matter. Oh; did you hear any other shots than those that you heard this man that shot you, as you claim, that night?—A. Those men?

Q. You said the Government soldiers shot you; did you hear any other shots than those that these men fired?—A. I heard afterwards, back of the alley of Ruby Saloon; it is the same Miller Hotel that runs up. I heard some as I was coming on Elizabeth street to the drug store; as I passed the lamp of Crixell's I heard some shots.

Q. All the shots you heard that night fired from the same kind of guns?—A. It sounded like it; the sound—report—like a firecracker.

Q. Could you tell the difference between a rifle shot and a pistol shot?—A. Yes.

Q. Were there any pistols fired that night?—A. That is, with this common powder—black powder—I can, but this shot, it was a dead sound. I can't explain it very well, but it sounded like a firecracker.

Q. Did you hear any other kind of shots that night?—A. Not to my recollection.

Q. Were there any other shots fired than those you have just testified to?—A. During the time I was conscious I did not hear any more shots.

Q. Were all the reports you heard exactly the same?—A. Yes, sir.

Q. Then there were no pistol shots mixed up with these?—A. I did not hear any.

Q. Can you tell the difference between a Government rifle and a Winchester rifle?—A. By the sound of it.

Q. Are you sure there were no Winchester rifles fired that night?—A. No, sir; I did not hear any.

Q. And you are sure there were no pistol shots?—A. No, sir; I did not hear any.

REDIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. You testified on Saturday that certain lights hurt your eyes?—A. Yes, sir.

Q. Did you mean any kind of a light or bright light?—A. Like, for instance, the sunshine or the light right before my face.

Q. Bright light?—A. Bright light, and that has to be close to hurt my eyes—not at a long distance.

Q. But if it is a small light it doesn't hurt your eyes?—A. No, sir.

Q. Nor does it impair your vision at all?—A. No, sir.

Q. You had your back to the street light at the corner of Washington and Fourteenth?—A. Yes, sir.

Q. Did these men look toward you, that you saw cross by Mr. Cowen's house, when you were standing at the corner of Washington and Fourteenth?—A. They did.

Q. You made a statement Saturday that you were confused that night; what did you mean by that word confused?—A. I mean this, you know, that a man gets excited.

Q. You also said you were confused before this court; did you mean the same thing then?—A. Yes, sir.

Q. Is this confusion that existed in your mind due in any manner to your unfamiliarity with the English language?—A. Not much, though, I think.

Q. You stated Saturday it took you from eight to ten minutes to walk your horse from the corner of Washington and Fourteenth streets to the Miller Hotel; do you wish to change that in any way?—A. No, sir; I think that's right; I think more or less; of course I could not be certain.

Q. You stated you didn't know about that gate in the back of the Miller Hotel—that you didn't know what it opened into; did you mean you didn't know which direction the door swung?—A. No, sir; I never know, because I hardly ever go through that gate.

Q. Is that what you understood by the question?

By the counsel:

I shall have to object to that line of examination, unless you are going to repeat the whole question. If you want to know what he means, kindly ask the question as it appears, and I appeal to the record. The question was, "Did this gate open into the house or into the yard?" and you did not convey any such impression in asking the witness, and therefore it is not a fair readjustment, if I may use the word of the man's testimony.

By the judge-advocate:

Will the stenographer read the question as recorded; I have no desire to take any unfair advantage.

By the counsel:

I have no desire to curtail your questioning if you will just make it agree with the record; that's all I ask.

By the judge-advocate:

Let it go; it is immaterial.

Q. Is Mr. Wreford's office directly on the corner or not?—A. Yes, sir; it is right across the street.

Q. On the corner?—A. Yes, sir.

Q. And when you spoke about being two doors down, what did you mean by that?—A. Two doors; nearly doors.

Q. You mean the building has two doors in it?—A. It is all around there fronting Thirteenth street, and then there's streets on Elizabeth street.

Q. But Mr. Wreford's office is on the corner?—A. Right on the corner; yes, sir.

Q. And you stood on the corner?—A. Almost on the corner; the second door.

Q. Are these two doors in Mr. Wreford's office close together?—A. Almost right close.

Q. And they are also close to the corner?—A. Yes.

RECROSS-EXAMINATION.

QUESTIONS BY THE ACCUSED.

Q. How many men did you see look toward you at the time you were standing on the corner of Washington and Fourteenth streets, and as they were crossing the alley?—A. The two bunches, rather to say, as they passed; one four passed, and they looked; they sort of turned toward the way I was.

Q. They all looked toward you, all that four?—A. Some.

Q. Well, how many?—A. I could not tell you; maybe two or three; the first.

Q. The first two or three?—A. Of the first four, perhaps two or three faced a little toward me.

Q. Perhaps they did, or they did?—A. They did, sir.

Q. And you are sure there were two or three of the first four that looked toward you?—A. About three.

Q. And they were all black men?—A. They looked black; I did not see any white at all about it.

Q. Did you see they were black?—A. Yes, sir.

Q. Were there any others that looked toward you?—A. Then after the first four passed by I seen one.

Q. Did he look toward you?—A. Sort of turned that way.

Q. And you could see that he was also a very black man?—A. All that passed, they were dark; I could see no white man.

Q. Could you see he was black, though—that's the question?—A. I could see they were dark in the face.

Q. That makes four that you swear looked toward you?—A. Three the first bunch, four in it; there were three men that turned and looked toward me, and the other four that passed, only one.

Q. So altogether four out of the two bunches looked toward you?—A. Three and one is four; yes, sir.

Q. Any others look toward you?—A. That's all I saw; then I girthed up my horse.

Q. Was this after or before you girthed up your horse?—A. Before I cinched my horse.

EXAMINATION BY THE COURT.

Q. You stated that the men who did the firing near the Miller Hotel wore blue woolen shirts; are you positive of this?—A. Some of them wore dark blue woolen shirts and others had khaki clothes; I mean sack coats.

Q. May these shirts not have been the blue chambray cotton shirts?—A. They were woolen; I could see plain with the clear light night and then the flash of the guns; I could see right plainly they were woolen shirts.

Q. Are you sure that all of the questions and answers made to and by you before Mr. Purdy were read to you before you signed the paper?—A. Yes, sir.

Q. How many policemen were in Brownsville on the night of the 13th of August?—A. I think there is seven.

Q. Do you know where those policemen were stationed at that time?—A. Right now I have not got exactly all of them, but if I had the time book here from Brownsville I could, but I could give you as nearly as I can. Felix Calderon, on Fifteenth street; Jose Coronada, on Fourteenth street; Thirteenth street, I can't recall his name—a new man on the course—but I can get it from the other policeman; the other, that is, Genaro Padron, is on Commercial street, Elizabeth street; Galvan, it was on Fifth, Sixth, and Seventh streets; Rivas, Eighth, Ninth, and Tenth streets. If the court will allow me, I will ask another policeman what the new man's name was. There is another policeman, Leal, at the market.

Q. Do you remember about the number of men you saw who were with the firing party on the night of the 13th of August?—A. Yes, sir.

Q. How many?—A. About 15 or 20 men, more or less.

Q. You stated that you can see better on a dark, starlight night than in daylight. Explain what you mean by that?—A. Because I have been many years at night, and I can't see very well, you know, with the light. I can see, but it hurt my eyesight. For instance, sun shining or the light of a lantern approached by.

Q. Are there in Brownsville, to your knowledge, or amongst the troops stationed there on August 13 last, enemies of yours, who would take advantage of any safe opportunity to shoot at you, as was done on this occasion?—A. Well, they did.

Q. (Same question repeated.)—A. Enemies; no, sir; I don't know, because they were new troops, and I never spoke to them and they never spoke to me.

Q. You testified that when you crossed the alley a volley was fired at you; would this volley endanger the lives of the other men on the other side of Thirteenth street? If not, please explain why not, if you can.

By the counsel:

I don't recall that he has testified to any men being on the other side of the street. Therefore the question is confusing to me, and I don't know what he means.

By president of the court:

It probably refers to the answer he gave with regard to the files of soldiers who formerly were in the alley and afterwards preceded him down Thirteenth street, and, in answer to several questions, seemed to have brought out the fact that there were soldiers passing on each side of Thirteenth street. One file on the side of the hotel and the other, as I remember, on King street. However, I did not ask the question personally, and I don't know what is intended.

By the counsel:

I don't object to the question, except that it is confusing, to my mind. I don't see how the witness can understand it if it is confusing to us, who have watched the testimony so closely. I don't object to it going in the record.

Q. Do you understand what is meant by that question? The question has been explained that you were being followed by two files of soldiers, one on each side of the street, as I understand the explanation, and both of these files were shooting toward you.—A. Yes, sir.

Q. Then would this volley endanger the lives of the men on the other side of the street? If not, why not?—A. They could, because they could go through houses and perhaps kill people.

By the counsel:

I object to the judge-advocate explaining the questions of the court. I am on record as stating the question was confusing to me, and I do not think it within the province of the judge-advocate to explain the question. The judge-advocate has made one attempt, and I shall have to object.

By the judge-advocate:

I understood I was doing so by request of the court. I should certainly like to be relieved.

The court then took a recess until 2 o'clock p. m., at which hour the members of the court, the accused, his counsels, the witness, the reporter, and the judge-advocates resumed their seats.

Q. At the alley and Thirteenth street did you notice any one apparently in command of the men?—A. One gave the alarms, I suppose; perhaps it was in command. One word just said, you know, at that moment.

Q. You testified that at the alley and Thirteenth street you heard some one say as you passed there, "Give him hell." State, if you can do so, whether the voice was that of a white man, negro, Mexican, or otherwise.—A. Yes, sir; it was a coarse voice—sounded like a negro man.

Q. During how many years has khaki been worn by the Brownsville police?—A. It is lately, I think.

Q. Why was it that you did not change the gait of your horse when you realized that you were about to be fired on opposite the alley?—A. Because the idea was to holler to the people of the Miller Hotel.

Q. When you passed the alley down Thirteenth street did you pass between men that looked like soldiers, or were such men all on your left?—A. They were United States negro soldiers.

Q. (Question repeated.)—A. On both sides.

Q. To the best of your knowledge, is there an element in Brownsville hostile to you?—A. Hostile is fighting, isn't it?

Q. Have you any enemies in Brownsville that you know of?—A. No, sir; I am well liked by gentlemen, ladies, and children.

RECROSS-EXAMINATION.

QUESTIONS BY THE ACCUSED.

Q. Tell us the difference between a negro's voice and a white man's voice.—A. Generally, a negro man has a very coarse voice and his language and speaking—way they speak.

Q. Did you ever hear a white man with a coarse voice?—A. But in speaking it is different.

Q. Did you ever hear a white man speak with a coarse voice?—A. Some they have a coarse voice, but not very coarse, as a negro.

Q. Then the only quality that distinguishes the negro's voice from the white man's in your mind is coarseness?—A. Yes.

Q. Is it possible you might have been mistaken in the voice?—A. No, sir.

Q. Is that the only thing made you determine it was a negro talking—the coarseness of the voice?—A. And the uniform they had.

Q. What is the distinguishing color of that uniform and that of the police?—A. They are yellow. But some of those men had, as I said, blue flannel shirts and some had khaki shirts.

Q. Those men that were all in khaki, could you tell any difference between that khaki and the khaki the police wore?—A. No, sir; no.

Q. This morning I understood you to say you could.—A. By the badge.

Q. Are the police and the soldiers the only people you ever saw in Brownsville wearing khaki?—A. And soldiers.

Q. Police and soldiers?—A. Yes, sir.

Q. You are positive you never saw anybody in Brownsville in khaki except soldiers in the garrison and the police?—A. Yes, sir.

Q. Might there have been others in the town wearing khaki that you did not see?—A. No, sir.

Q. If they had been in khaki, you are bound to have seen them; is that true?—A. Yes, sir.

REEXAMINATION BY THE COURT.

Q. Did you ever notice a difference in the tone or accent of the negro race, Mexican, and white people?—A. Yes, sir.

RECROSS-EXAMINATION.

QUESTIONS BY THE ACCUSED.

Q. I would like the witness to give the differences to the court between each ones he has known—illustrate it, or in any manner he sees fit—between the voices of the three peoples he has named—that is, Mexicans, negroes, and white people.—A. The voice of each nation?

Q. Explain to the court the differences, either by illustration or description—any manner you see fit—between a negro's voice, a Mexican's voice, and a white man's.—A. Generally, a Mexican, he has not got the strong lungs and their voice is lower; and the white people, generally they have strong lungs and they speak, you know, in a medium way of speaking, not loud enough, but loud; and the negro, they have very coarse voices and flat way of speaking.

Q. Is that all?—A. That's all.

Mr. F. E. STARCK, a witness for the prosecution, was duly sworn, and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please state your name, residence, and occupation.—A. F. E. Starck; my residence is Brownsville, Tex., and I am a mounted inspector of customs.

Q. In the Federal employ?—A. Yes, sir.

Q. Where do you live in Brownsville?—A. I live on Washington street, close to Thirteenth street.

Q. Can you show us your house on this map, which is a map of Brownsville and Fort Brown? Go up there.—A. I will try, sir. I don't understand this map. Here is Thirteenth street.

Q. Fort Brown is there to the right.—A. Yes, sir; my house should be right in here

Q. On Thirteenth?—A. On Washington street, right on Washington, and this is Thirteenth street and this is Washington street. My house is right in here, sir. (Pointed midway between Thirteenth and Twelfth, facing Washington.)

Q. As you walk down Washington street toward Fort Brown, is your house on the left-hand side or the right-hand side?—A. The left-hand side.

Q. Then can't you, with that in mind, point out your house on that map?—A. I am beginning to understand the map now, sir. That's my house right there, number 6; I got twisted around. That's my house there.

Q. Where were you on the night of August 13, 1906?—A. I was home.

Q. In the house you pointed out on the map?—A. Yes, sir.

Q. Were you there alone?—A. No, sir; I was there together with my family—wife and children.

Q. How many children have you?—A. I have six, sir.

Q. How long have you lived in this house?—A. Seven years—seven or eight years.

Q. I would like to ask you if you know what that picture is?—A. That's my house, sir, right there. (This photograph was submitted in evidence; is hereto appended and marked —.)

Q. Did anything unusual occur on the night of the 13th of August, 1906?—A. Yes, sir.

Q. If so, please tell the court all that you heard or saw.—A. Well, on the night of the 13th of August last, about midnight there was some shots fired in town—sounded to us shooting was going on toward Miller Hotel—and woke us up. A few moments after we were awakened there was a volley fired right in front of my house—right from Washington street. We were all in bed at the time; the reason I knew my house was shot into there was a large splinter about 6 or 8 inches long fell from the ceiling and struck the mosquito bar of the bed I was in. My wife and I jumped out of bed. I carried two of the little children, and my wife and other children followed us. I took them back through another room into the kitchen and made them lie down on the floor behind a brick chimney—large brick chimney we have. I then ran back to our room, after leaving my family there, and took my Winchester down from on top of the wardrobe, ran to the window, and could not see anyone.

Q. Was there anything that would intervene to prevent your getting a full view of Washington street toward the garrison?—A. No, sir.

Q. Were there any lights in your house at this time?—A. Yes, sir; one in the children's bedroom; I kept one there always.

Q. What portion of the house is this?—A. On the south side.

Q. If that window is shown in this photograph, please mark it with a cross.

(Witness does so.)

Q. As you approach your house from the direction of Fort Brown can you get a full view of this window from the street before you get clear there?—A. Yes, sir.

Q. There is nothing that cuts off a portion of it?—A. A little portion there; the lower portion there is a wall, about 5 feet high, a brick

wall, that divides our lot from this Brownsville Transfer Company lot; that wall is about 5 feet high.

Q. Did you notice particularly the sound of the reports of these firearms which were discharged in your direction?—A. I did, sir.

Q. Please state to the court anything particular you noticed.—A. They sounded to me like a high-power rifle shooting—cracked like a whip.

Q. Have you ever owned a high-power rifle?—A. Yes, sir.

Q. Did these reports sound like that rifle you owned?—A. Yes, sir.

Q. What was this rifle you owned?—A. Winchester, model 1895. Used that same rifle in the service for four years. Mr. Creager now owns that rifle.

Q. By the service, you mean what service?—A. In the customs service we are required to use a rifle.

Q. What character of ammunition does this rifle of yours use?—A. It used to use the regular Government cartridge they used in the Krag-Jörgensen, regular 30-40.

Q. Did you notice any odor of burning powder upon this occasion?—A. No, sir.

Q. After this shooting, you spoke of, through your house, were there any shots fired?—A. Yes, sir; I heard other shots fired after that.

Q. Other shots fired into your house?—A. No, sir; not into my house.

Q. Was all the firing into your house in the nature of a volley?—A. Just a single shot afterwards, just a moment afterwards, one single shot, just like that (snapping fingers).

Q. Where did that shot take effect?—A. That's the shot that went in our bedroom—that is, my wife's bedroom—and went through the walls of the house, struck the cornice on the wardrobe, then glanced upward, ran along the ceiling of our room 6 or 8 inches, took an upward course and went through an upstairs room floor, then made its exit in the rear of the house through two more walls.

Q. Of what material is your house constructed?—A. Lumber, frame building.

Q. Are the walls and ceilings of ordinary thickness?—A. Yes, sir.

Q. After this last single shot which you spoke of as having been fired into your house, what other shooting did you hear?—A. I heard shooting—sounded to me like toward the Miller Hotel, as near as I could judge.

Q. For how long a period did all the shooting continue?—A. Well, the shooting—probably it was all over—from the first I heard of it it could not have been more than eight minutes, I reckon, probably eight or ten minutes, as near as I can remember.

Q. Did you hear anyone or anything passing your house at about this time, do you remember, either before or after?—A. Shortly after the shooting; yes, sir.

Q. What was it, as far as you know?—A. Saw a man, afterwards turned out to be a policeman.

Q. Mounted or upon foot?—A. Afoot.

Q. Did you examine the interior or exterior of your house upon the following day?—A. Yes, sir; daylight; as soon as we could see the next morning.

Q. What did you discover?—A. Found that 8 bullets had gone through my house.

Q. Did you make any attempt, from the alignment of these shots, to discover from what approximate point they were fired?—A. Yes, sir.

Q. What did you discover?—A. That they were fired from almost direct in front of the house, just from one side of that wall that divides us from the livery stable.

Q. Had the firing apparently been done over the wall?—A. Yes, sir.

Q. These points of entrance and exit of the bullets, were they apparently in the same horizontal line?—A. Yes, sir. The bullet holes are still in the house.

Q. Is the point of exit on the same line as the point of entrance, or are they higher or lower?—A. A little bit higher—probably about a foot higher at the exit from where——

Q. Was the point of exit higher than the point of entrance? If so, how much?—A. I mean the whole length of the house. It might not be a foot; I say about a foot. I never measured them.

Q. How did there happen to be a light burning in your house on that night?—A. We always keep a night-lamp in the children's room; do yet, to this day.

Q. Did you pick up any unusual objects the following morning?—A. Yes, sir.

Q. Please state what to the court.—A. In the presence of Mayor Fred Combe and the city marshal, in fact together, the mayor picked up 3 or 5 empty hulls and I picked up 3 or 4.

Q. What do you mean by hulls?—A. Hulls are shells after the cartridge has been fired.

Q. At what point were these objects found?—A. Almost in the middle of Washington street, just below the livery stable fence.

Q. How close to your house?—A. Well, from the middle of the street to my house I guess it would be about 50 feet.

Q. What became of these objects you picked up?—A. The ones I picked up I turned over to Mayor Fred Combe and kept one, and that same day the Citizens' Committee—I was on duty at the ferry—and the Citizens' Committee sent after me and asked me for the cartridge and I gave it to them; turned it over to Capt. William Kelly.

Q. Did you ever testify before the Citizens' Committee?—A. Yes, sir; they asked me a few questions.

Q. Were you put under oath?—A. No, sir; just in an offhand manner they asked me a few questions and I answered them.

Q. Any record made of your remarks?—A. Yes, sir; I believe they had a stenographer there.

Q. Did you find anything else except those empty shells?—A. That's all I found, sir.

Q. Describe to the court their appearance.—A. Well, they were a long shell. Close to the butt end of it they have a little groove in there to show they had been used in a clip. As near as I can describe them they looked something to me like the Mauser cartridge, only a little bit larger.

Q. These holes that were in your house, were they large holes or small ones?—A. At the point of entrance they were very small, but where they came out they just tore the lumber all to pieces.

Q. Did you ever fire this Winchester rifle of which you have spoken?—A. Yes, sir; on many occasions.

Q. How did these holes you saw in your house compare with the holes that would be made by your Winchester?—A. About the same.

Q. What is the age of your eldest child?—A. Thirteen years.

Q. And the youngest?—A. The youngest is a year and a half.

Q. Describe this shot or these shots that went through the children's room.—A. Well, they practically all went through the children's room, except one, the one I described as having gone upstairs. Five of them went up a little higher than the others—went in on the outside wall from 6 to 7 feet higher, and came out about 7½ or 8 feet—and two went in the window, that window I just marked, and they both made holes in the mosquito bar in which my two little girls were asleep. One is 12 years and the other 10. One bullet hole is a little higher than the other, probably 4 or 5 inches difference in their height; both took about the same direction. These two shots came through the window I marked, went through the mosquito bar and they only went through two walls, the other six shots went through every wall in the house, from the front to the rear.

Q. About how far above the bed did these shots go?—A. About 15 or 18 inches, as near as I can remember; I have never measured.

Q. Who lives next door to you?—A. Mr. Fred Tate.

Q. Are your houses in any respect similar?—A. No, sir; mine's a larger house.

Q. What is Mr. Tate's employment?—A. He is a mounted inspector of customs also.

Q. What is his first name?—A. Fred.

Q. What is your first name?—A. Fred.

Q. Do you recognize what that is (handing witness photograph)?—A. Yes, sir.

Q. Tell the court, please.—A. The house to the right is my house, the house to the left is Mr. Fred Tate's house.

Q. Will you mark Mr. Fred Tate's house with a pencil?

(Witness does so.)

By the counsel for accused:

We would like to know if this purports to represent the condition of the house at that time.

By the judge-advocate:

It does not; it is merely to locate the position of the house.

By the counsel:

I think we shall have to object to it then, as it gives an erroneous impression of the conditions existing at that time. I mention this as, at a glance, it shows it was taken in the winter time and does not show the conditions existing at the time. It must be limited to the conditions that existed at the time.

By the judge-advocate:

The picture will be withdrawn and not introduced in evidence at this time.

CROSS-EXAMINATION.

QUESTIONS BY THE ACCUSED.

Q. How long have you lived in Brownsville?—A. I was born and raised there, sir.

Q. Did you ever see anybody in khaki there except soldiers?—A. Yes, sir.

Q. Who?—A. City policemen.

Q. Anybody else?—A. I might have; I don't remember.

Q. As a matter of fact, don't a good many people in Brownsville in the summer time wear khaki clothes?—A. No, sir.

Q. You are positive of that?—A. Yes, sir; there may be a few of them; it is not a custom though.

Q. I noticed you were very careful in your direct examination to state that you were not under oath when examined by the Citizens' Committee?—A. Yes, sir.

Q. Do you mean us to infer by that that you didn't tell the truth?—A. No, sir; I told the truth.

Q. So what you said at that time before the Citizens' Committee was the truth?—A. Yes, sir.

Q. Your purpose was not to evade anything you said at that time?—A. No, sir; all statements I have made I try to make the same.

Q. What time did you say this was when this commenced, Mr. Starck, when you were aroused?—A. About 12 o'clock.

Q. Then you were mistaken when you said to the committee it was half past 12?—A. I don't believe I said to the committee; if I did, why——

Q. I don't wish to take any snap judgment, I submit to you what purports to be a report of that, so you may read it.—A. (Witness reads.) I said "about half past 12." I won't say it was 12; I say about; I would not say whether it was 12 or half past. The reason I said 12 I heard it was about 12 o'clock. I was too busy to look at the clock.

Q. You can readily understand, Mr. Starck, that time was important to us; we want to know of your own knowledge. Then you didn't know what time it was?—A. No, sir; I did not look at the clock.

Q. You said at this same interview with the Citizens' Committee you saw a man running down the street?—A. Yes, sir.

Q. Will you tell the court just where you saw the man; how long you saw him, and all about it?—A. It was right after the shooting; he was coming down Washington street toward the post. That was probably ten minutes after the shooting, if I remember correctly—five or ten minutes—something like that.

Q. After the shooting was over?—A. When I saw this man, yes, sir; the shooting was all over.

Q. You had not seen anybody up to that time?—A. No, sir.

Q. And you didn't see any man up to ten minutes after the whole thing was over?—A. No, sir.

Q. He had a rifle in his hand?—A. Yes, sir.

Q. What position did he have the rifle in?—A. He was holding the gun up something like that. (Position to shoot.) He came running along.

Q. Mr. Starck, I am free to confess I don't know whether I understand you or not. You said he was coming toward the post; is that what you mean to say—coming toward the post down Washington street? The captain will point out to you there on the map Washington street, and then I want you to tell the court just where this man was. (Describes map to witness.)

Q. Those red letters are supposed to be the barracks.—A. I understand.

Q. Your house is way over there. (Point it out, Captain.)—A. Yes, sir.

Q. And there is Thirteenth street.—A. Yes, sir.

Q. And there is Miller Hotel down on the alley, you see?—A. Yes, sir.

Q. Now, Fourteenth street is along there.—A. Yes, sir.

Q. And Fifteenth street, or the firing line, is along there.—A. Yes, sir.

Q. Did you ever hear that street called the firing line?—A. Yes, sir.

Q. That's the general name for it?—A. That's the name; yes, sir.

Q. Tell us where that man was when you saw him.—A. As near as I can remember just where that T is in Washington.

Q. Which way was he going?—A. I won't be positive about that, but I think he was going the other way.

Q. That would be away from the barracks?—A. Yes, sir. I am not ready to say whether he was coming toward the post or not; I was so confused I don't remember, but I think he was going from the post.

Q. You were pretty well confused at that time?—A. Yes, sir; I was.

Q. Had you been confused ever since the firing commenced?—A. No, sir.

Q. When did you get confused?—A. When I heard the bullets hitting my house; I was lying in bed listening to the shots.

Q. From that time on you were confused?—A. Yes, sir.

Q. How was this man dressed?—A. Had on a khaki uniform.

Q. Did you see him from that light? That light was shining?—A. Yes, sir.

Q. That is an oil lamp?—A. Yes, sir. The only thing is, that light is on the wrong corner; that light should be on this other corner (looking at the map).

Q. The light is on what corner; the west corner?—A. Yes, sir; the same light is there yet.

Q. On the west corner?—A. Yes, sir.

Q. This is the west corner, isn't it?—A. Yes, sir; it is right on that corner of Mr. Bolack's residence. Mr. Bolack's house is right there; all that is his property.

Q. Is it on the corner toward your house?—A. No, sir; on the corner from my house.

Q. You mean across Washington street?—A. Yes, sir.

Q. Is it on your side of Thirteenth street or on the otherwise?—A. On the other side.

Q. It is across Thirteenth street from you?—A. Yes, sir; right there; the captain has it right now. There's the lamp; it is the same lamp there yet.

Q. You are very sure about that?—A. Yes, sir; I am sure.

Q. We don't vouch for that map, but it is supposed to be——A. I am positive of it though, sir. That's what got me mixed up when I saw that star there, but I have got it so I understand the map. The lamp should be right where the rod is pointing now.

Q. Then it's really on the south corner?—A. When I say west I mean coming up the street going to the post; it would be west, you know, coming toward the post. The streets run almost north——

Q. As you go from the Miller Hotel to your house, going up Thirteenth street and then turning on Washington, do you leave that light on your right or left?—A. I will describe it to you myself. Here is the Miller Hotel and here is the alley; there's Mr. Bolack's residence and store (pointing across the alley from Miller Hotel and on the right-hand side of Thirteenth street). This is Mr. Bolack's property also (pointing to the vacant property on the north corner of the block bounded by Washington, Thirteenth, the alley, and Thirteenth streets) and the lamp should be right here (pointing at the south corner or on the corner of Mr. Bolack's property on Thirteenth street and Washington).

Q. That's correct, is it?—A. Yes, sir; that's correct; and across from here is where Mr. Porter lives and here's the livery stable, and there's where I live.

Q. You spoke of a Mr. Turk's house?—A. Right here (pointing directly across Washington street from his house).

Q. I think somewhere in some of your testimony you spoke of a church, Mr. Starck. Will you locate that on the map for the court?—A. The church is about here (indicating on the eastern half of the block bounded by Adams, Twelfth, Thirteenth, and Jefferson streets).

Q. Does it face on Adams street?—A. No; on a cross street; the church takes a whole block; after you pass Adams you come to another alley and then starting from the alley it runs down to the next street, called Jefferson street; it takes up a whole half block, the Catholic church.

Q. That's the church you mentioned in your previous testimony?—A. Yes, sir.

Q. The church fence come right to the alley? Is the church between the alley and Jefferson?—A. Yes, sir; between the alley and Jefferson.

Q. Now, Mr. Starck, the first shots, as I understand, which you heard were at Miller Hotel, as you located it at the time?—A. That direction; yes, sir.

Q. Did you hear a bugle call that night?—A. I did, sir.

Q. How long with respect to that time was it—I refer now to the time you were aroused and heard those shots at or near the Miller Hotel—how long after or before that was it until you heard the bugle call?—A. I heard two bugle calls. I heard the first bugle call shortly after I heard the first shots, and my wife and I thought it was fire down in the post; and then shortly after that was when the shots were fired into our house and a few seconds after I got back to the window from putting the children back, I heard the bugle call. I heard a few shots still fired after the last bugle call. I was then at the window; I had my gun and was at the window—not one you see in the picture, but the one facing on Washington street. I threw the window open there.

Q. That's a dormer window on Washington street?—A. No, sir; it don't project out; it is just a double window.

Q. How many shots did you hear altogether?—A. I can't tell you, sir; I never counted them.

Q. You said before the Citizens' Committee—how many shots did you hear before and after?—A. I believe I said about 150, 50, or 100, something like that, but it was just all guesswork; I could not say exactly.

Q. I don't want to bind you down to the number of shots; I want your best recollection. I want you to tell the court, as consecutively as you can, first, how many shots you heard first thing, as near as you can recollect, and then what you heard next, and so on, so we can get the sequence as near as you can recollect it. I want, approximately, your recollection.—A. I heard shots, then I heard a bugle call, then I heard more shots, then I heard the shots in front of my house—but it is all guesswork; I can not tell you.

Q. How long would you say it was between the first shots you heard and the bugle call, approximately?—A. It was just a few moments when I heard the first call.

Q. You heard some more shots?—A. Yes, sir.

Q. About how long would that be after it?—A. It seemed to me it could not have been over five minutes.

Q. Do you think there was as much an interval as five minutes there before you heard shots, after the first bugle call?—A. After we heard the first shots I heard shooting all the time; no stop at all.

Q. Practically continuous?—A. Practically continuous; yes, sir.

Q. You think there was five minutes between the first bugle call and the next one?—A. To the best of my recollection, about five minutes.

Q. How long did the shooting last after that second bugle call you heard sounded?—A. Just a couple of moments afterwards.

Q. Where was the shooting after the second bugle call you heard? Can you remember where that was?—A. It was somewhere in the alley there, between Miller Hotel and Twelfth street, it sounded to me.

Q. That would be, as I understand it, in front of your house, almost.—A. Yes, sir; almost directly in front of my house.

Q. And that lasted how long, that shooting in that alley and directly in front of your house?—A. Just a moment or two. It was all over within a moment or two.

Q. But the whole shooting lasted about eight or ten minutes?—A. To the best of my recollection, it hardly exceeded ten minutes; about eight or ten minutes. I could not say exactly.

Q. But your best judgment; the first shooting was at the Miller Hotel?—A. I could not see whether it was right at the Miller Hotel, but toward the post. I was in bed in the house. It sounded to me right in that direction. I could not say exactly.

Q. You didn't say at that time that you saw anybody that you thought was a soldier, did you? Did you say in your direct examination that you saw anybody you thought was a soldier?—A. If I did I don't remember having said it. I remember seeing this policeman, and that's about all.

Q. That's the only man you saw, as a matter of fact?—A. Yes, sir.

Q. You didn't see anybody that was a soldier at all?—A. No, sir.

Q. What kind of guns did the policeman have?—A. They don't use any but pistols.

Q. Didn't you say that policeman had a gun?—A. Yes, sir.

Q. Then he had armed himself somewhere?—A. Yes, sir; as a general thing they don't have anything but clubs and pistols.

Q. Do you know what kind of a gun he had that night?—A. No, sir; I can't tell you.

Q. What did he have on besides the khaki uniform?—A. Had a great big badge on.

Q. What kind of a hat?—A. I could not tell you he had a hat on.

Q. You recognized him by the badge?—A. Yes, sir; he had a badge on.

Q. How close was he to you?—A. Right in the middle of the street, run right down the middle of the street.

Q. Twenty feet from you?—A. A little further than that. The street is 60 feet wide and the sidewalk about 8, and about 5 feet between the fence and the house; about 30 or 35 feet, something like that, from where I was at the window. Bright light, you know, they have two lights—two lanterns, the one I pointed out and one on the other corner—and from the two lights you know you can see well. Down on Twelfth street they have a lamp on the other corner also.

Q. Were there any other lights in the block that you could see?—A. No, sir.

Q. You didn't note them if there were?—A. I never went out in the street that night at all; I stayed in the house; never went out in the street until the next morning just after daylight.

Q. In describing these bullets you said there was one went into the Catholic church?—A. Yes, sir.

Q. And you said that was the same one that struck your house; do you know that as a fact?—A. I said probably the same one.

Q. Well, I will read your evidence: "Q. Where did the other bullet enter your house?—A. The firing sounded to us like a volley and then there was a single shot fired afterwards that struck the front of our house and just took off the top of the cornice of the wardrobe in our front room, in the room in which my wife and I sleep, and then ran along the ceiling about 2 feet, tearing the wall paper, then took an upward course, went through the ceiling, through the floor in the room upstairs, and then went through both walls, and that bullet is the one that hit the Catholic church and struck the window where Father Smith's room is."—A. Yes, sir.

Q. You don't know whether that is the same bullet or not?—A. That is a mistake; I should have said probably the same bullet. Father Smith was with me and we took the alignment of the holes and they struck in about the same direction. I could not swear that was the same bullet.

Q. In your testimony before Mr. Purdy, in speaking of the shooting, you made use of this expression: "They had to get on this side of the wall."—A. Yes, sir.

Q. And as I understand it, that's the wall that runs alongside of your house?—A. Yes, sir.

Q. To the east or southeast, shall I say?—A. I can show you exactly. (Takes photograph.) This only shows a picture of the building. There is a long shed there, and there is a brick wall, 5 feet

high, that comes from that building and butts up alongside the fence here, and they had to shoot over two fences across that way.

Q. What did you mean when you said they had to go on this side of the wall? What did you mean?—A. To shoot to the house.

Q. No, I will read you: "There is a brick wall that separates our house from the livery stable, they had to go on this side of that wall to fire into our house on account of the large barn."—A. That is the barn I am speaking of.

Q. What do you mean by speaking of going on this side of the wall? Do you mean the side toward your house?—A. No, sir; I meant they had to go on the side—this front wall is high, there is a gate there and the wall is high, and this other wall is lower. They had to go on this side of the wall, at the stable, to be able to shoot over this other wall.

Q. So they had to go beyond the wall?—A. No, sir; not entirely. You see this fence over here is lower and this front fence of the stable is higher and then cuts down to meet this, and they had to go beyond this high fence.

Q. Beyond the gate part?—A. Yes, sir.

Q. How far down Washington street would that bring them from the corner of Thirteenth street?—A. There is two lots here, and they are 50 feet lots, so that was 100 feet.

Q. Then they must have gone down 100 feet on Washington avenue from Twelfth street?—A. Yes. That is, from Thirteenth street about 100 feet more or less.

Q. Show us where you picked up those shells, will you?—A. Yes, sir; right about here where that N is in Washington; right in the center of the street. (Second N in Washington.)

Q. How far from your house was that?—A. Those streets are 60 feet wide; Washington street is, and that window there is probably over 18 feet from the fence, and the sidewalk is 8 feet wide, and that would be 60, 8, and 18.

Q. How were they lying—all in a bunch?—A. No, sir; they were strewn along, to the best of my recollection, to the distance of 5 or 4 steps, I believe; that's my testimony given before.

Q. You didn't find anything but hulls or shells?—A. That's all I found.

Q. There were no clips?—A. No, sir; no clips.

Q. How long after the first sound was it until you heard them shoot into your house?—A. Just a few moments; probably three or four minutes.

Q. Three or four minutes from the first disturbance you heard until they fired into your house?—A. Yes, sir.

Q. I am a little hazy in my recollection about this horseback riding. I wish you would clear that up for the court. With respect to the time you were first aroused, when did you see this man on horseback?—A. I did not see him at all. I heard him go by. I did not state I saw him. I stated I heard somebody go by horseback. I did not see him at all.

Q. Tell us when that was with respect to the time you were aroused.—A. It was right after we heard the first shots, and just a few moments after this man went by horseback was when they fired into our house.

Q. How was the horse going? What would the sounds indicate?—A. A trot, sounded like.

Q. He was passing in front of your house?—A. Yes, sir.

Q. On Washington street?—A. Yes, sir.

Q. Which way was he going?—A. Going toward the post.

Q. You said something about the chief of police in your evidence to Mr. Purdy; you didn't know whether that was the chief of police or not, did you?—A. I stated in my evidence I thought it was him.

Q. Because you knew afterwards he went by?—A. Yes, sir.

Q. That's the only reason?—A. Yes, sir.

Q. You don't mean to give the impression you knew anything about it?—A. No, sir; that's the reason I said I thought it was him—just heard somebody go by horseback.

Q. You heard somebody running or walking in front of your house? A. Yes, sir.

Q. When?—A. Right at the time of the shooting.

Q. How many men were running by?—A. I could not tell you.

Q. Your judgment.—A. I was so busy trying to get my little ones out of harm's way, I heard some scurrying—running back toward Thirteenth street—but I was trying to get them from being killed, and I did not pay any attention.

Q. How long after the shots were fired into your house did you hear them scurrying back toward Thirteenth street?—A. Right immediately afterwards; I had not got out of our room yet into the children's room.

Q. And how long after that was it you heard the man trot by?—A. About five or six minutes.

Q. And you didn't hear any other horseback man, did you?—A. No, sir.

Q. How long have you been a neighbor of Mr. Fred Tate's?—A. I think he has been in Brownsville about ten or eleven months; he moved there when he came to Brownsville. He moved into that house he is living in now possibly ten or eleven months ago.

Q. You have been pretty close friends?—A. Yes, sir; we are intimate.

Q. Have you been in the same business all the time?—A. Yes, sir.

Q. Ever talk to him about this matter?—A. Yes, sir.

Q. How often?—A. I don't know, I have talked with him several times; could not say the exact number of times.

Q. Is he the man who is alleged to have used a revolver on one of the colored soldiers down there? He told you about that, didn't he?—A. Yes, sir.

Q. When, with respect to the time that occurred?—A. I don't remember exactly, but I think about the 8th of that month; I wont be positive.

Q. Were you there when that occurred?—A. Yes, sir; I was in Brownsville.

Q. What date was it that that occurred?—A. I think the 8th, sir; I am not sure.

Q. And he told you, according to your recollection, the same day?—A. He told me about the occurrence about half an hour after it happened; met him on the street and he told me.

Q. Ever discuss that with anybody else besides Mr. Tate?—A. Yes, sir; I have.

Q. I mean aside from these examinations before the committee and before Mr. Purdy; have you discussed it with anybody else besides these and Mr. Tate?—A. Yes, sir.

Q. Tell us who.—A. I could not tell you exactly; I have discussed it with so many people there at home; for instance, the collector of customs and the special deputy and other friends, but I am not prepared to tell you who I have spoken to; how many.

REDIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Where did you give your evidence before Mr. Purdy?—A. In Mr. Louis Kowalski's office, in Brownsville.

Q. And where is that building located with respect to the Leahy Hotel, for instance?—A. Right adjoining.

Q. On what side?—A. On Elizabeth.

Q. So, when you said on this side of the wall, you meant on the side toward the Leahy Hotel?—A. Yes, sir.

Q. You say you recognized a badge on this policeman you saw pass your house that night?—A. Yes, sir; if I had not I would have shot at him.

EXAMINATION BY THE COURT.

Q. Did you have any trouble with the colored troops at Brownsville just prior to August 13 last? If so, what was it?—A. No, sir; never had any trouble with them at any time.

Q. Do you know of any cause or reason why your house should have been fired into that night? If so, describe it.—A. None whatever, sir. I can't understand why my house was fired into, unless it was mistaken for Mr. Tate's. That's the only reason I can see.

Q. Did you ever see Winchester ammunition with the same kind of cartridge shell as you picked up in Washington street on August 14?—A. Never, sir.

Q. Did this man you saw running past your house wear leggins or resemble a soldier in uniform?—A. No, sir; he had no leggins on; he had on a khaki uniform but no leggins.

RECROSS-EXAMINATION.

QUESTIONS BY THE ACCUSED.

Q. Haven't you seen soldiers in khaki uniform without leggins?—A. Yes, sir; I have.

REEXAMINATION BY THE COURT.

Q. Do you know any reason for men firing into Mr. Tate's house?—A. I don't think—there were no shots fired into Mr. Tate's house.

Q. (Same question repeated.)

A. Well, unless it was because he knocked the soldier down for rubbing up against Mrs. Tate. That's the only reason I should——

Q. Do you know what gun the shells you picked up would fit?—A. Springfield rifle and this new rifle the Government uses.

RECROSS-EXAMINATION.

QUESTIONS BY THE ACCUSED.

Q. Do you know of your own knowledge about a soldier touching Mrs. Tate?—A. No, sir; only from hearsay.

Q. Then what you said about a soldier touching any lady there was all hearsay?—A. Yes, sir; all hearsay.

Q. How do you know the shells you picked up fit the Springfield rifle?—A. Because they look like the ones I have seen—seen soldiers put them in a Springfield rifle down in the quartermaster's corral at Fort Brown.

Q. But you never tried them in a rifle?—A. Yes, sir.

Q. The same shells you picked up?—A. No, sir.

Q. You did not personally try these shells in the Springfield rifle?—A. No, sir; not those I picked up in the street.

Q. And you didn't see them tried?—A. No, sir.

Q. Then you don't know whether these particular shells were for——A. No, sir.

Q. Yes. All coons look alike to me.—A. They do to me, too.

REEXAMINATION BY THE COURT.

Q. Do you know of any other gun these shells would fit?—A. No, sir; I do not.

There being a motion before the court for adjournment at this time, the accused, his counsels, the reporter, and the judge-advocates then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows: I am instructed to announce the decision of the court that you will proceed with the trial.

Dr. FREDERICK J. COMBE, mayor of Brownsville, a witness for the prosecution, was duly sworn, and testified as follows:

The judge-advocate here stated as follows:

Unless there is objection on the part of the court, the examination of this witness will be conducted by the assistant.

To which the president replied:

If there is no objection, the assistant counsel will proceed with the direct examination.

DIRECT EXAMINATION.

QUESTIONS BY ASSISTANT JUDGE-ADVOCATE.

Q. What is your name?—A. Frederick J. Combe.

Q. Your residence?—A. Brownsville, Tex.

Q. Occupation?—A. Physician and surgeon.

Q. What official position do you hold in Brownsville, if any?—A. Mayor of the city.

Q. How long have you been mayor of the city of Brownsville?—A. Since April, 1905.

Q. Continuously to the present time?—A. Yes, sir.

Q. Where were you on the 13th day of August, 1906?—A. I was in Brownsville, the town of Brownsville.

Q. Do you know a man by the name of Evans, who was living in Brownsville at that time?—A. Yes, sir.

Q. What was his business or occupation, do you know? If so, state.—A. He was a State quarantine officer.

Q. He was living in Brownsville?—A. Yes, sir.

Q. Do you know where his residence was—in what part of the city of Brownsville—on that date?—A. Yes, sir.

Q. State.—A. It was in the eastern part—I don't remember the name of the street—in the old Leahy House.

Q. How far from the Fort Brown Reservation, more or less?—A. From the wire fence to the house in which Mr. Evans lived is about 70 yards.

Q. Is this wire fence a fence along the line of the reservation, between that and town?—A. Yes, sir.

Q. A continuation, is it not, practically, of that brick wall that begins at the river and runs along?—A. Yes, sir.

Q. Do you remember when the battalion of the Twenty-fifth Infantry, under command of Maj. Charles W. Penrose reached Fort Brown and took station there?—A. The 28th day of July.

Q. What year?—A. 1906.

Q. Were you at that time employed in any capacity in Fort Brown?—A. Yes, sir; I was acting post surgeon.

Q. I refer to the date of the arrival of the command of the Twenty-fifth.—A. Yes, sir.

Q. And you so continued until when?—A. Until the post was abandoned.

Q. When was that, do you remember? If so, state, more or less, the date.—A. I can not give the exact date. About two weeks after the battalion left Brownsville.

Q. After which battalion left Brownsville?—A. After the battalion of the Twenty-fifth Infantry. There was a detachment of the Twenty-sixth there, and I continued while they were there.

Q. In other words, until the post was abandoned, early in the spring?—A. Yes; I don't remember the exact date.

Q. Did this man Evans come to you, or approach you as mayor of the city, on the 13th of August, last year, for any purpose?—A. Yes, sir; on the 13th day.

Q. About what time of day, more or less?—A. In the afternoon about—I don't remember the exact hour, it must have been about 3 or 4 o'clock. I am not positive.

Q. Along in the afternoon?—A. Yes.

Q. You had a conversation, you and he?—A. Yes, sir.

Q. Was the accused, Major Penrose, present at that conversation?—A. The first conversation, no, sir; it was in my office.

By the judge-advocate:

I take it that under the rule that the accused not being present, the conversation between Evans and Doctor Combe would not be admissible. Am I correct?

By the counsel:

We so understand it.

By the judge-advocate:

I don't want to bring in testimony that is not competent.

Q. Major Penrose was not there?—A. No, sir.

Q. You will not state that conversation, but simply the effect. What did you do, you and Mr. Evans, after you had had this conversation, in pursuance of that conversation?—A. Mr. Evans left me and came back, and then we went to the post.

Q. Where did you go in the post?—A. We went to the administration building.

Q. Were you looking for anyone?—A. We were looking for Major Penrose.

Q. Do you recognize the accused here on trial as the same Major Penrose?—A. I do.

Q. For whom you and Mr. Evans were looking on that day?—A. Yes, sir.

Q. Did you find him?—A. Yes, sir.

Q. Where?—A. On the walk between the hospital and the commanding officer's quarters.

Q. In Fort Brown?—A. In Fort Brown.

Q. About what time of the day was that, according to your best recollection?—A. Between 5 and 5.30, I think.

Q. In the afternoon?—A. Yes, sir.

Q. Was there any conversation between you and Mr. Evans with Major Penrose, or between Major Penrose and Mr. Evans in your presence?—A. Yes, sir.

Q. Go on and give that conversation or those conversations, as best you recollect.—A. I first shook hands with Major Penrose and then introduced Mr. Evans, and Mr. Evans had a conversation with the Major before I addressed him.

Q. That was in your presence and hearing?—A. Yes, sir.

Q. Go on; state what it was.—A. As near as I can remember, Mr. Evans, who was quite excited, told Major Penrose what had taken place at his house.

Q. State what he told him, Doctor.—A. He told him that his wife had been assaulted by a negro soldier in the yard in rear of her residence; that the man had taken hold of her by the hair and thrown her to the ground, and that she had screamed and fainted. Major Penrose asked him how he knew, or his wife knew, it was a negro soldier, and he said that his wife had said that he was dressed in khaki and that he was black; that he was a negro. Mr. Evans was very much wrought up, and Major Penrose showed feeling. He was outraged at hearing such a story and at first hardly believed it; said he could not believe that a man of his command would do such a thing; and Mr. Evans still insisted. I can not go more into detail; they talked for several minutes, and then I said to Major Penrose, after Mr. Evans had gotten through, I said, as near as I can remember, "Major Penrose, this is a terrible thing; the people in town are very much excited and it will not be safe"—I am not positive now whether I used the expression "it will not be safe," or "I will not respond for the lives of your men if they go into town," but I used one or the other. Major Penrose, as I said a few moments ago, showed feeling; said he was very, very sorry this had occurred, and that he would immediately take steps to keep his men from going into town—that he would issue an order at once. The Major and I stepped to one side and had a short conversation. At this moment I can not remember what passed during that conversation, but the Major again repeated to me, he said, "Major Combe, I regret this very, very much indeed, and I

shall immediately issue an order to keep my men out of town." He then walked toward the guardhouse; we said good-by, parted, and returned to town.

Q. Did you say he walked toward the guardhouse, or we?—A. He, Major Penrose.

Q. You and Mr. Evans returned to town?—A. Yes, sir.

Q. Did you see Major Penrose again that evening before night?—A. I don't think so.

Q. Where were you on the night of that day, August 13—that is, after the usual bedtime?—A. I was at my residence, at the corner of Ninth and Elizabeth streets.

Q. Did you hear or were you awakened by anything unusual on that night? If so, state what.—A. I was awakened by what I felt to be four or five pistol shots, immediately followed by not exactly a volley, but irregular rifle firing. This woke me. I got out of bed immediately, put on my clothes, ran into a room where I keep my shooting things, picked up a pistol, came back on the back porch where I was sleeping, and called to my brother upstairs, Dr. Joseph K. Combe, and said, "Joe, I am going to find out what that firing is," or "to stop that firing." I am not sure which expression I used, but one or the other. I started and went out the side door of my residence, which gives on Ninth street, and when I got to the corner to turn down Elizabeth——

Q. By down, Doctor?—A. I mean toward the garrison, downtown. My brother reached my side and we ran down the street together, on the same side of the street——

Q. That is, right hand going toward the post?—A. Yes, sir. We parted, and I was walking very fast when we got in front of the postoffice——

Q. Where is that?—A. The corner of Tenth and Elizabeth.

Q. On the same side?—A. On the left-hand side. And he continued on the right side of the street, and I was in the middle of the street, going at a trot; and when we got a little ways down the street he called to me and says, "Fred, hug the wall; they are still firing down the street," or "shooting down the street." That's the remark he made. I then ran in to the sidewalk and ran along the sidewalk downtown.

Q. Did you run on the same side of the street Joe was on or on the opposite side?—A. On the opposite side.

Q. Whereabout were you when your brother Joe called out to you as you testified?—A. Right there near the corner, just after we left the corner of Tenth and Elizabeth streets.

Q. You adopted his suggestion, did you?—A. I did.

Q. Did you hear anything corroborative of his warning?—A. Yes, sir.

Q. What did you hear?—A. I heard the whizzing of the bullets high up.

Q. From what direction were they coming, evidently, from the sound?—A. Coming from a southerly direction.

Q. Are you sure they were bullets that were whizzing by you over your head?—A. Not by me; they were high in the air.

Q. Are you sure they were the whiz of bullets?—A. Yes, sir.

Q. Could you hear at that time the report?—A. Yes, sir; firing had not ceased.

Q. From what direction did the reports come, with regard to the post?—A. From a southerly direction; in the direction of the post.

Q. From the post?—A. Not from the post; in the direction of the post.

Q. A general direction?—A. Yes, sir.

Q. Well, continue.—A. When I got opposite First National Bank, that is on the corner of Eleventh and Elizabeth——

Q. Right-hand side going toward the post, or left-hand side?—A. Left-hand side going toward the post. I gave the signal for a policeman, which is three sharp raps on an iron post. The lamp posts are iron, and the policemen have a signal, three sharp raps with their club on the post give a ringing sound. I used my revolver for that purpose, but the metal striking against metal did not give the sound I desired, and I ran down the street and found a brick and gave the signal on the post opposite the gallery which supports the Celyia——

Q. Celyia Building is?—A. On Elizabeth, between Eleventh and Twelfth, in the middle of the block.

Q. Are those uprights that support that veranda of iron or wood?—A. Of iron.

Q. You rapped that?—A. Yes, sir; and then kept on down the street, and when I got opposite—just past Putegnat pharmacy, just a little further down the street in the same block—a policeman or some one came around the corner——

Q. Around what corner?—A. Around the corner of Twelfth street, from the direction of Washington street, into Elizabeth.

Q. That is, met you?—A. Coming toward me on a run; and I had my pistol in my hand and covered the man, hollering at him, halting him. At the same time my brother did the same thing on the other side of the street. This man evidently saw the gleam of my pistol—there was a lamp on the corner—and halted and said: "Its me, Genaro." I then recognized him as one of the Mexican policemen.

Q. Genaro what?—A. Padron.

Q. Was this man armed or not?—A. Yes, sir; they are all armed. I did not see his weapon, but they are always armed.

Q. You recognized him as one of the policemen?—A. Immediately. He said to me: "Mr. Mayor, don't go any further, you will be shot," or something to that effect. That's what I thought he said. I said, "Come on," and went on down the street.

Q. Continued on down Elizabeth?—A. He followed me; yes, sir. When we got exactly opposite the Merchants' National Bank——

Q. Where is that?—A. On the corner of Twelfth and Elizabeth.

Q. Left-hand side going down?—A. Left-hand side going down. There is a street light right there—I saw a dark spot on the ground, the smooth mesquite block—the pavement is mesquite-block pavement—and I stooped down and put my hand into it and walked over to the lamp, and I detected it was blood, and turned to my brother, Dr. Joe Combe, and said, "Joe, this is blood; follow this trail and find out who has been hurt." I then went on down the street, and when I got opposite Crixell's saloon——

Q. Locate that for us.—A. It is in the middle of the block.

Q. On what street?—A. On Elizabeth street, between Twelfth and Thirteenth.

Q. On which side going toward the post?—A. On the right-hand side, almost in the middle of the block.

Q. Well, go on.—A. I saw a man by the name of Jose Tamayo, who sometimes acts as a special policeman, with a Winchester rifle in his hand—I found it to be a Winchester rifle when I examined it—and he was just coming out of the saloon. I grabbed the rifle from him and said, "what are you doing here with this rifle?" He said, "I have just come out of the saloon with it." I took it away from him and gave it to some one in the saloon. A few minutes afterwards the chief of police came up, and I asked him where his policemen were. He said, "They are on their beats and will soon be in." I walked on down the street——

Q. By down, you mean continued toward the post?—A. Toward the garrison. I saw something white lying across the sidewalk; I walked up to it and saw it was a dead horse—recognized it at once as the horse of the lieutenant of police——

Q. Dominguez?—A. Yes.

Q. Did you know the horse?—A. Yes.

Q. Where did you find that horse?—A. Lying across the sidewalk in front of Wreford's office.

Q. Where is Wreford's office; locate it?—A. On the corner of Thirteenth and Elizabeth streets, on the right hand side, diagonally across from Miller Hotel.

Q. How near to the corner of Elizabeth and Thirteenth streets, in front of Wreford's office, was this white horse of the lieutenant of police lying when you discovered it?—A. About 18 or 20 feet from the corner of the house.

Q. There is a lamp right there at that corner, is there not, a street lamp?—A. Yes, sir.

Q. That street lamp is right at the corner?—A. Right at the corner.

Q. How far from the street lamp was this horse lying, more or less?—A. A little more than 20 feet.

Q. Twenty feet which way, up the street or inside the pavement?—A. Up the street in the direction from which I was coming.

Q. What did you do then? That horse was dead or not?—A. Yes, sir.

Q. Go on.—A. I walked under the lamp-post and looked up and down Thirteenth street; then walked diagonally across the street to Miller Hotel; the front of it was brightly lit up.

Q. How was that front of Miller Hotel lighted?—A. By an acetylene jet in the courtyard and by a light in the office.

Q. Doctor, how long have you lived in Brownsville?—A. All my life, with the exception of my college days and my service in the Army.

Q. Are you familiar with the general locale of Brownsville and the streets and buildings there, especially public buildings?—A. Yes, sir.

Q. (Hands witness a photograph.)

A. That's the front of Miller Hotel, on the corner of Thirteenth and Elizabeth.

Q. What street does that gallery face?—A. Elizabeth street.

Q. And this with the two doors downstairs, what street is that?—A. Thirteenth street.

Q. Come up here and mark on this where those lights were. You say there were two lights at Miller Hotel; were any outside the building?—A. One of them just within that door. (Marks X on picture.)

Q. How far inside of that door?—A. To the right of the entrance a few feet.

Q. Does the light shine out?—A. Yes, sir.

Q. Thrown out from that jet?—A. Yes, sir.

Q. Where is the other one; you said there was another acetylene jet?—A. I don't know whether it is acetylene or a lamp; there was a light in there in that office.

Q. The main office?—A. Yes.

Q. How far from that door?—A. I don't know.

Q. Was the light from that jet or lamp thrown out into Elizabeth street?—A. Yes, sir.

Q. To what extent? How far out would those two lights extend?—A. Those two lights—with the street-corner light—made the corner very bright.

Q. You meant by the corner the corner at the junction of Elizabeth and Thirteenth?—A. Yes, sir.

(Photograph submitted in evidence and hereto appended and marked .)

Q. Well, proceed. You went from there to the Miller Hotel, you say?—A. Yes, sir. I walked into that door that opens into the courtyard and called out, "Does anybody know anything about this firing?" No one answered me, but some one came downstairs in his pajamas, ran by me—I don't know who it was—from upstairs. I then turned around and walked up Elizabeth street in the direction from which I had come. When I got opposite the Ruby Saloon——

Q. Where is that?—A. Almost directly opposite Crixell's saloon on Elizabeth street—on the left-hand side of the street, as you come down toward the post.

Q. Go on.—A. I came on back down, and there I met the chief of police and all of the policemen that had been called in from their beats, and quite a number of citizens armed with shotguns, pistols, and rifles, and such weapons as they could get together.

Q. How many policemen were there with the chief of police?—A. All but three.

Q. How many were there?—A. I asked Mr. Connor, "Are all your men accounted for?" he said, "All but three." I asked him who were they; he said the lieutenant and two others.

Q. The lieutenant, you mean Dominguez?—A. Yes, sir. At that time we thought those two policemen had also been shot.

Q. Go on.—A. The people were quite excited, and they addressed me especially to lead them down to the post. I looked around and found a box and got up on it and addressed them, and told them that I had been a soldier——

Q. Why did they want to go down there?—A. They were incensed—mad.

Q. At what?—A. Because they said the colored troops had fired on the town.

Q. Give us the substance of what you told them, Doctor.—A. I told them I had been a soldier, and it would be a great mistake to go down against those men; that they were armed with the best weapons in the world; that they were good soldiers themselves; that I had served with them, and that an awful slaughter would be committed if we did go down there. I appealed to them, first as their friend, to go home. I then told them, as mayor of the city, that I ordered

them to go home; if they did not go I would take means to arrest them, and I appealed to the prominent citizens who were there to help me in getting these people home. We succeeded in getting them all away, except such officers and men as I requested to stay with me, and the police force.

Q. Kept only your officers and sufficient force to maintain quiet and peace?—A. Yes, sir.

Q. All right.—A. I wanted to go down to the post at once alone, and the citizens there requested me not to do it; that inasmuch as the soldiers were probably very much excited it would be dangerous for me to do it. I then said to my brother, Dr. Joseph Combe, "Go to central and see if you can get Major Penrose, I want to speak to him." He started around the corner, went up the street to the corner——

Q. You did not go with him?—A. No.

Q. He left in the direction of central?—A. Yes.

Q. Did he return?—A. No, sir; he met Captain Lyon and halted him.

Q. Did he return from the direction of central?—A. Yes, sir; with Captain Lyon, and I thought a company of men.

Q. What were they?—A. His troops—his soldiers. I met Captain Lyon and shook hands, and just about the time we met, on the flank of the company and to the rear some one said, "Captain, those men have guns." And I saw them break from the rear rank and I rushed back and said, "Let those men alone, they are officers," or "those men are officers." Captain Lyon accompanied me—we ran down the flank of the company, and he ordered his men back, and had to repeat the order——

Q. How often did Captain Lyon have to repeat that order before those men went back in rank?—A. He only repeated it once before they went back.

Q. He gave the order and repeated it?—A. Yes.

Q. It was a second order, then, before they obeyed?—A. They were a little surly in falling back into their places.

Q. You noticed that at the time?—A. Yes, sir.

Q. Go on.—A. I said to Captain Lyon, "I want to speak with Major Penrose at once." He said, "Very well;" he said, "Come right into the post with me." My brother and myself placed ourselves at the head of the column and marched to the post.

Q. With Captain Lyon and his company?—A. Yes, sir.

Q. His men of the troops, were they white or colored?—A. Colored troops.

Q. Of the Twenty-fifth Infantry?—A. Yes; one company of that battalion stationed there.

Q. Go on. You went to the post?—A. I walked in the post and Major Penrose was just within the sally port.

Q. Just look at that picture. What does that represent?—A. That's the garrison gate that gives on Elizabeth street.

Q. What is the other?—A. A small gate to the right as you come out of the post.

Q. Which do you refer to as the sally port, the larger gate?—A. Yes, sir.

Q. Just put an X there.

(Witness does so.)

(Photograph submitted in evidence, hereto appended, and marked —.)

The court then took a recess until 4.45 o'clock p. m., at which hour the members of the court, the accused, his counsels, the reporter, the witness, and the judge-advocates resumed their seats.

Q. You say you saw Major Penrose just inside that sally port you have indicated opens into Elizabeth street?—A. Yes, sir.

Q. Proceed.—A. I shook hands with Major Penrose, and I said, "Major, your men have shot up the town; have killed one citizen, badly wounded the lieutenant of police, killed his horse, and shot into quite a number of houses." Major Penrose said, "Doctor Combe, I can't believe that; it has been reported to me that the citizens have fired on the post." I said, "No, sir; it is not so." There were two or three officers near by, and we got into general conversation. What we said I do not remember, but Major Penrose and I stepped aside and we talked over the matter. We were there a few minutes—quite a little while—when Captain Macklin came up and reported to the commanding officer. Major Penrose said, "My God, Captain Macklin, where have you been?" Captain Macklin said, "I have been in my quarters asleep—in my quarters." Major Penrose said, "I have sent two men to look for you." Captain Macklin repeated where he had been, and then Major Penrose said, "Captain Macklin, you will take command of your company; it is along the wall," and Captain Macklin saluted the commanding officer and walked away. I remained there——

Q. Just a second. About what time was it, more or less, when Captain Macklin walked up and reported to the commanding officer?—A. About 1 o'clock, perhaps a little after.

Q. Go on.—A. I remained a short while longer, talking with the officers, and finally turned to Major Penrose and said, "Major, there's a great deal of excitement in town; don't allow any of your officers or your men to go into the town." Major Penrose said to me, "Doctor, you may rest assured that I shall allow no one to enter the town without consulting you, and I shall allow no one to enter the post but yourself; you may come in at any hour. I shall so instruct the—" Whether he said the officer of the day or the sentries I don't remember. My brother and I then said good night to the officers and walked out the main gate down the street. When I got opposite Miller Hotel some one ran up to me and said: "There's a man dead in Ruby Saloon. The city physician can't be found, and you are wanted to examine the body." I went on down the street and met Mr. V. Gavito——

Q. Who is he?—A. Justice of the peace.

Q. He is ex officio coroner in Texas?—A. Yes, sir.

Q. Where did you find the coroner?—A. In front of the Ruby Saloon. We walked in together with some other citizens; I don't remember who they were; back to the courtyard, and there I found the body of one Frank Natus lying in the courtyard.

Q. You knew this man as Frank Natus in life?—A. Yes, sir.

Q. All right.—A. I then made an examination. I stripped the man and found that he was shot through the body—clean through the body, as near as I can remember, between the seventh and eighth rib, I believe—through the body

Q. From side to side or from front to back, or how?—A. From side to side.

Q. Describe the appearance of the wound.—A. The man was dead. He had two bullet wounds, as I have stated before, evidently inflicted by a high-power rifle.

Q. Why do you say that?—A. Because both orifices were very small—so small that I hardly knew which was the orifice of entrance and which the orifice of exit. If I remember right, the left orifice, which I supposed to be the orifice of exit, was a little larger—a very little larger—than the orifice of entrance.

Q. The orifice of entrance would be on which side?—A. On the right side, if I am correct. I doubt whether one who knew nothing of gunshot wounds would know which was the orifice of entrance and which of exit.

Q. The man was dead?—A. Yes.

Q. Look at this photo, please (handing witness a picture).—A. Yes, sir.

Q. What is that? State to the court.—A. That is the rear entrance to the Ruby Saloon.

Q. Opening from where?—A. That's the alley between which runs the length of the town, between Washington and Elizabeth streets.

Q. In the rear of the Ruby Saloon?—A. Yes, sir.

Q. Look through that door. Do you recognize that open space?—A. That's the courtyard.

Q. What courtyard?—A. Of the Ruby Saloon.

Q. Could you locate, more or less, on there where the body of Frank Natus, the deceased, was lying when you found it?—A. More or less, where that cross is.

(This photograph introduced in evidence, hereto appended, and marked ——.)

Q. Where did you go from there, Doctor?—A. I then left the saloon and walked out into the street; sent for the chief of police; ordered all the saloons closed, and ordered everybody off the streets, except the police officers and such special officers as I had appointed to assist me in keeping peace. I ordered Mr. Connor, the chief of police—I told him I would personally take charge of the police that night, and told him to so locate his men as he saw fit, and that I would inspect them later. I then went with my brother, Dr. Joe Combe, to assist him in applying a temporary dressing to the arm of the lieutenant of police.

Q. Where did you find him?—A. In Putegnat's pharmacy.

Q. The place you already testified to?—A. Yes, sir.

Q. All right.—A. We put on a temporary dressing—the man was very weak—we improvised a litter and took him to his house.

Q. Did you see the wound at the pharmacy?—A. Yes, sir; I did not examine it carefully.

Q. What part of the body was it in?—A. His wrist. Just above his wrist and hand a few inches was shattered.

Q. Could you tell about where the point of entrance of that wound was, more or less?—A. I did not examine the wound, because there had been an improvised tourniquet applied to check the hemorrhage.

Q. That had been already done?—A. Yes, sir.

Q. The right or the left arm or wrist?—A. The right arm. Through

this thin gauze bandage which is used you could see the ends of his fingers shattered, drooping; the pulpified flesh we examined.

Q. He was then taken home?—A. He was then taken home. I returned downtown. I meant to the scene of the firing.

Q. All right; go on.—A. Oh, I had asked the lieutenant of police where he was shot—from what point—and he told me from the corner——

Q. Was the defendant present when you had this conversation with Dominguez?—A. No, sir.

Q. It would not be competent evidence then, Doctor.—A. I walked on downtown and around the corner of Miller Hotel to the alley.

Q. You went down Elizabeth and turned?—A. I went down Elizabeth to the corner of the Miller Hotel to see that my orders had been carried out about not allowing people to walk around the streets.

Q. And you turned into what street?—A. Into Thirteenth street, down toward the alley where I was told the firing was.

Q. On which side, King's or——A. Miller side. When I came to the sidewalk cross to the alley I stepped on something that gave a metallic sound and crunched under my feet. I stooped down and picked up—I don't remember how many, but two or three shells.

Q. Empty shells or ball cartridges?—A. These were empty. I felt around again and I eventually found one ball cartridge, a clip, which in all made up six or eight empty shells, the clip, and this ball cartridge. I walked back; there was not much light there. I walked back to the hotel, around to the hotel and the courtyard light, examined them, and saw that they were what I have just stated—several empty shells, one clip, and this ball cartridge.

Q. Was the clip empty or any ball cartridge in it? That particular clip that you found?—A. I don't remember.

Q. Describe these shells and ball cartridge, and tell what they were, if you know.—A. They were the shells and clip and ball cartridge which is used in the Springfield rifle, I am told; I am not familiar with the arm, but I am told it was the ammunition that was used in the Springfield rifle.

Q. You are familiar with ammunition used in Winchester rifles?—A. Yes, sir.

Q. You are familiar with the ammunition used by the United States Army when they used the Krag-Jörgensen rifle?—A. Yes, sir.

Q. How long were you in the service yourself, the Army?—A. Very nearly five years.

Q. What rifle was used then, what arm, by the United States infantry?—A. When I first went in the service the arm that was generally used was the old Springfield rifle, then it was succeeded by the Krag-Jörgensen.

Q. Were these shells such as could be used by any of those firearms, or were ever used, to your knowledge?—A. No; different shells.

Q. What difference was there, if any, between these shells and this ball cartridge you picked up and the other ammunition?—A. The cartridge that was used in the old Springfield rifle is very much larger in diameter; I can not give the technical expression, but the bullet is a leaden bullet, very much larger; use black powder in it.

Q. Was it steel jacket, or how?—A. In the Krag-Jörgensen was

used a steel jacket projectile, but the shell is a little different at the base; it has a shoulder, if I may use that expression.

Q. Which?—A. The Krag-Jörgensen.

Q. Such as those you found?—A. There is a little depression all around the base of the cartridge.

Q. For what purpose?—A. Well, I fitted quite a number of empty shells into a clip, and I was told it was for that purpose, but I don't know.

Q. Was there a clip of this class, or a clip used with the Krag-Jörgensen, when that was in use?—A. Not while I was in the service.

Q. Have you any other reason for believing or concluding that this ammunition belonged to the modern Springfield rifle used by the Army now?—A. No; I have not. I was generally told by everybody who saw them that they were. I showed them to the commanding officer of the post, and he told me they were.

Q. The accused?—A. Yes, sir.

Q. That's also another reason why you say it was Springfield rifle?—A. It strengthened my belief.

Q. What else did you do after taking these to the light and examining them?—A. I then went down the street, walked over to the market hall, police headquarters, and from there went around to different points, looking for some of the policemen to see that they had been properly stationed, and then came back and sat—I felt it my duty to be on the streets that night—and sat on the porch of the Miller Hotel.

Q. Until daylight?—A. Not until daylight. I went home at 3 o'clock. Everything was quiet about 3 o'clock.

Q. Did you come back downtown again?—A. Early in the morning; yes.

Q. About what time?—A. I left home about half-past 5.

Q. Where did you go?—A. I came down the main street, and I met the chief of police and some one else, I don't remember who it was, and we walked down to where I had found these shells at 2 o'clock in the morning—about 2 o'clock.

Q. Now, right there, I wish you would go to that map and show the court just where you found those shells at 2 o'clock in the morning.—A. Right in there as I crossed that alley. (Indicated a point midway between Miller Hotel and the house directly across the alley, but slightly toward the street from the mouth of the alley.)

Q. As you crossed to the sidewalk?—A. The sidewalk that goes right along. I followed that sidewalk, and right about in there.

Q. Just outside of this alley, in the mouth of the alley?—A. It was not back in here, but right out from there into the street more than into the alley.

Q. Out of the mouth of the alley, if we may use such an expression?—A. Yes, sir.

Q. You went back there, you say about what time, with the chief of police?—A. I came downtown about half-past 5; it must have been very nearly 6 when we went there.

Q. What happened when you went back?—A. From there I walked on down; I was told Mr. Starck's house had been shot into and I walked down the middle of this street, and right here, a little down the street from Starck's house, right about there, I found some shells, right in there.

Q. Is there a fence or wall between Starck's premises and the grounds of the transfer company?—A. A brick wall.

Q. Runs from the street to the alley?—A. Runs straight back.

Q. Was it below that wall, or above that wall, toward the post, in the street?—A. I am inclined to think it was a little below.

Q. What did you find there?—A. Quite a number of empty shells of the same kind I had found the night before.

The court then, at 5 o'clock p. m., adjourned to meet at 10 o'clock a. m., February 12, 1907.

CHAS. E. HAY, Jr.,
Captain, Acting Judge-Advocate, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., February 12, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocates. The accused, his counsels, and the reporter were also present.

Reading of proceedings of February 11 was dispensed with.

Mayor COMBE, being still on the stand, was reminded he was still under oath, and testified further, as follows:

DIRECT EXAMINATION CONTINUED.

Q. I would like to clear up one of the last few answers of yesterday, with the court's permission. You were told Mr. Starck's house was shot into and you walked down the middle of this street; what do you mean by this street?—A. This is Thirteenth street (indicating on map), and I walked east.

Q. On Thirteenth?—A. Yes; and then turned the corner into Washington street, and right there, as I stated yesterday——

Q. What do you mean by right there with respect to the Starck house? You have already indicated the Starck house. What do you mean by there with respect to the Starck house, first as to distance from the Starck house?—A. From that point to the Starck house? From that point into the yard?

Q. How far is it from that point where you marked or indicated to the front wall of the Starck house?—A. From the gutter, near the curb, where I picked up those shells, to that part of the house would be about, I should imagine, 18 or 20 feet.

Q. Second, with respect to the Starck house, as to whether it is up the street—that is, away from the post—or as to whether it is down the street—that is, in the direction of the post. How is it in other words? Is that up the street from the Starck house or down the street?—A. Toward the garrison.

Q. Now, with regard to that brick wall or fence which you have testified to running from Washington street back to the alley—with regard to the brick wall, is it toward the post from the brick wall or away from the post?—A. You mean from the Starck house?

Q. That brick wall.—A. It is toward the post from the Starck house.

Q. From the brick wall that runs right here—this point where you found the shells—is it toward the post from that brick wall or away from the post?—A. It is toward the post.

Q. About how far toward the post from that brick wall?—A. A very few feet.

Q. Who picked up these shells at that point, that is, while you were present?—A. I picked up some, and Mr. Starck picked up some.

Q. How many, more or less, did you pick up?—A. Six or eight.

Q. Were they empty shells or ball cartridges or some of each?—A. I think they were empty shells.

Q. All of them, to the best of your recollection?—A. Yes, sir.

Q. Did Mr. Starck pick up any in your presence?—A. Yes, sir.

Q. How many did he pick up, more or less?—A. A hand full; I don't remember the exact number.

Q. A hand full?—A. Yes, sir.

Q. What did he do with them, state, if you know, at that time?—A. He gave them to me.

Q. Were they all empty shells, or were there any ball cartridges amongst them?—A. As near as I can remember they were empty shells.

Q. Were there any other shells or ball cartridges picked up at all about that spot in your presence and view, if you remember, by anyone else besides yourself and Mr. Starck?—A. I don't remember.

Q. What time of the morning was this, more or less?—A. About 6 o'clock.

Q. How did those shells that you picked up at that spot and those that Mr. Starck picked up and handed to you at that place compare one with the other?—A. They were the same kind of shells.

Q. How did they collectively compare with the shells and the ball cartridge or cartridges picked up by yourself at about 2 a. m. at or about the junction of Thirteenth street and the alley between Washington and Elizabeth, near the Miller Hotel, as testified to by you on yesterday afternoon? In other words, how did the Starck shells, if I may use such an expression, compare with the Miller Hotel shells?—A. They were the same kind of shells.

Q. Any difference that you could note or see between the one set collectively and the other?—A. No, sir.

Q. Or between any one of the one set separately, or severally rather, and any one or more of the other set severally?—A. They were the same.

Q. Each and all?—A. Yes, sir.

Q. Well, where did you go then from the Starck house?—A. I walked up Washington street and into Twelfth, and into Elizabeth. I then went to my office, which is situated on Elizabeth street between Tenth and Eleventh. While there my buggy was brought to me, and my brother, Dr. Joseph Combe, and myself drove down to the post.

Q. What was your errand in going to the post?—A. I was going to the hospital.

Q. For what purpose?—A. I was post surgeon, acting post surgeon.

Q. You and your brother, Doctor Joe, drove into the post?—A. Yes, sir.

Q. Through what entrance, and locate it, did you drive into the post of Fort Brown on that occasion?—A. Through the main gate on Elizabeth street.

Q. That sally port as to which you testified yesterday afternoon and marked upon that photo as having been the place where you met Major Penrose?—A. Yes, sir.

Q. Go on.—A. And we drove in; the drive turns to the right in front of one of the quarters, and then to the left in front of the administration building, and then to the left again along the officers' row, up to the hospital.

Q. This driveway, after it passed through the sally port going into the post—does it pass between the barracks of any two companies that were then stationed there?—A. Yes, sir; it passes between two of the barracks, one on the right and one on the left.

Q. Do you know what company at that time occupied the barracks on the right of the roadway as you drive through the post?—A. I know that D occupied the barracks on the right, and I think that B Company occupied the barracks on the left.

Q. Go on.—A. As we drove around in front of D Company barracks I saw the company in front of the barracks cleaning their guns. I saw two officers there. I remember they were officers because I saluted as we went by. I am of the impression that Major Penrose and Lieutenant Grier were there.

Q. That they were these officers to whom you refer?—A. That's my impression; I am not sure of that.

Q. You are not sure as to the identity of the officers, is that the idea?—A. I am not sure, no, sir; but there were two officers.

Q. By officers I take it you mean commissioned officers?—A. I mean—of course—yes.

Q. You drove where?—A. I then drove around to the hospital. I was there a few minutes and drove back into town.

Q. When you came into town did you take the same route you took going to the hospital?—A. I don't remember whether we went back around the other way or came in front of the quarters.

Q. To go around the other way you would have to go out through that Jefferson street gate, wouldn't you?—A. No, there was no gate there; it was closed up; I think you would have to come in rear of the quarters, but I don't remember whether I took that road or the other in coming back.

Q. What time did you get back to town, more or less?—A. I was gone about half an hour.

Q. Go on.—A. I went back down town and people were congregating on the streets and talking over the affair and they spoke of a mass meeting; I thought it advisable to call the thinking people together and I occupied myself for some little while in doing that, in sending out notice to the citizens to meet at the Federal court room.

Q. What time were they to meet?—A. I think the hour was 11 o'clock.

Q. Where did you go, then, before the meeting?—A. I was about town attending to this matter.

Q. Did you go back to the post or not?—A. I told Major Penrose the night before I would come down to see him in the morning, and I went down to see him between 9 and 10 I think. He was in his office in the administration building.

Q. Was he alone or was anyone with him when you went in?—A. No, sir; Mr. Creager, the United States commissioner was with him.

Q. Were they in conversation or not?—A. Yes, sir; they were in conversation.

Q. What was the subject of the conversation? State, if you can.—A. The subject of the conversation was about the affair which took place the night before, and the matter they were speaking about when I got there was who did the shooting. I joined in the conversation, and put my hand into my pocket and took out these empty shells I had picked up in front of the Starck residence and put them on the major's desk—on one corner of his desk—and said to him, "This is very strong evidence, Major," or something to that effect. And he said, "Yes, Doctor, it does look as if these men, or some of my men did this, but how they got their arms or how they did it I do not know; I can not imagine"—something of that kind.

Q. State any more of the conversation that occurred there—anything that you said or Creager said in the presence of the major or anything the major said.—A. I don't remember anything particular; we spoke about the matter generally.

Q. Go on.—A. I returned a few minutes after to town for the meeting.

Q. What time, more or less?—A. Between 10 and 11 o'clock.

Q. Just tell us what the result of that meeting was. Need not give us the proceedings, just the result; what was done in pursuance of anything resolved. What did you do?—A. A committee of the most prominent citizens, numbering about 15——

Q. Who was the chairman of it?—A. Mr. William Kelly.

By the counsel:

May it please the court, if this can be shown to have any connection with this case whatever, or if the court wants to hear it, we are not going to offer an objection, but I wish to say to you in all frankness that I can't for the life of me see how a meeting in town of the citizens of Brownsville, some fifteen hours after this thing occurred, can have any direct bearing upon the guilt or innocence of this accused in this matter. You will take note, if you will look at the charges, that it is a great many hours after the thing occurred; and, mark you, we don't impose an objection, if the court wants to hear all this, all that has occurred in Brownsville since this event. We don't propose to shut out anything that is relevant or material, but for the life of us we can not see how this can be competent, relevant, or material in the case, and we simply make that point now. We would like to know how it is. If the court wants to hear it, that is another matter.

To which the assistant judge-advocate replied:

May it please the court, I take it that the court will realize that I have tried to be as brief and as succinct as I possibly could be in the examination of this witness and yet do the Government's case justice. I have tried, and, in fact, have taken the initiative myself in advising witness not to testify to matters which I knew to be irrelevant, and not only that, but incompetent testimony, to save time. Now, I have an object in asking this question; the court will even notice that I have warned the witness to cut out, as it were—not give us anything that was said by any gentleman there, but to tell us what was done. We propose to prove by this witness, in fact we have proved it—he stated it—that that committee went to the post immediately or shortly thereafter and that the accused made certain admissions to them with regard to this very matter in a conversation held between him and them. That's all there is to it, may it please the court.

By the counsel:

Do I understand the counsel to say that Major Penrose was at this meeting in town that afternoon?

By the judge-advocate:

No, sir.

By the counsel:

Now, while it may be very competent, and we admit it is competent, perhaps, to say what Major Penrose said before a committee of citizens investigating this matter, Major Penrose was certainly not downtown; he was not present at the assembling of these people or the appointing of the committee, and, therefore, that is absolutely irrelevant, incompetent, and immaterial. As I say, we are simply raising the point of keeping out a lot of matter that is clearly irrelevant. Certainly we would not object to his saying that in due course a citizens' committee was appointed and then go on to say what happened; but certain deliberations of this committee has nothing to do with the guilt or innocence of this accused; he was not there; could not have been.

By the judge-advocate:

May it please the court, I have done just what the accused suggests. I have asked this man if the meeting was held; it was; a committee was appointed; it was, with Captain Kelly as chairman. I proposed to show that that committee went to commanding officer's office in the post and I propose to show conversation between the accused and members of this committee. I have not tried to prove or attempted to prove any acts of this committee or any words of this committee in the absence of the accused, except the bare fact that they were appointed; that they were the creature of this mass meeting. I have got to do that to show the capacity in which they approached this accused and by virtue of which they communicated with him, and in the course of which he held this conversation.

By the counsel:

With that limitation we interpose no further objection.

Q. Were you on that committee?—A. Yes, sir.

Q. Did that committee go down to the post that morning?—A. Yes, sir.

Q. About what time, more or less?—A. Shortly after 11 o'clock, after 11; it was between 11 and 12.

Q. State whether or not you went with the committee, as a member of that body.—A. Yes, sir.

Q. Where did you go? I mean you, the committee in the post?—A. We went to the administration building.

Q. With what object? For what purpose?—A. To confer with Major Penrose and to begin the investigation.

Q. Did you meet the major there?—A. Yes, sir.

Q. Remember when I say you, I mean the committee, unless I state otherwise. Where did you meet him?—A. In the office in the administration building.

Q. What passed between you and him on that occasion?—A. The president of the committee was the spokesman.

Q. Then state what passed between the president of the committee, acting as spokesman, and the accused, if anything, on that occasion?—A. There was a good deal of general talk. Mr. Kelly addressed the major and stated what he thought were the facts.

Q. With regard to what?—A. The affair that had taken place the night before.

Q. Be a little more specific. What affair?—A. The shooting up of the town.

Q. Give us in substance what Captain Kelly said to the major, briefly as you can.—A. He related to Major Penrose the attack on the town, the killing of one man, the wounding of another, the killing of a horse, and the shooting up the town.

Q. What did the major say in reply to all this?—A. I do not remember what the major said in answer to Mr. Kelly. The conversation was general.

Q. You mean between the committee on one side and Major Penrose on the other? You mean to give the court to understand this, I take it, that you do not remember what was said between the major and any particular member of the committee?—A. I do remember one or two points.

Q. Tell us what you remember, then.—A. One of the members of the committee asked Major Penrose if he had personally inspected the pieces immediately after the occurrence the night before——

Q. You mean the arms?—A. Yes, sir; or if he had depended upon the report of a noncommissioned officer as to the condition of these rifles. Major Penrose answered that he himself had not inspected the pieces; that he had depended at that moment on the report of a noncommissioned officer.

Q. Did he make any statement at that time or during that conversation as to when, if at any time, he had made an inspection himself?—A. I don't remember.

Q. Or had one made by a noncommissioned officer?—A. I don't remember.

Q. Go on, Doctor, tell us what else.—A. Another question asked by a member of the committee was he asked the major if any of the buildings, quarters, or barracks had been struck or hit by bullets, as it had been reported to the major that the citizens had done some shooting, and one of the committee asked him if any of the bullets had struck the buildings, and he said that not to his knowledge.

Q. Do you remember who that member was that asked that question or not?—A. No; I do not remember; but I do remember who asked the previous question.

Q. You mean who asked the question about the inspection of pieces?—A. Yes.

Q. Who was that?—A. Mr. Dennett.

Q. Mr. Dennett asked the question as to the inspection of the pieces?—A. That was the substance of his question.

Q. You don't remember, however, what member it was that asked the question as to whether any buildings of the post had been struck by a bullet?—A. No, sir; I don't remember.

Q. Go on.—A. I said very little at the meeting, but I gave over those clips to the major, and as I remember his answer he said he did not think there was any question that some of his men did the shooting. He was very—he showed feeling, and told the citizens, "Gentlemen, I would give my right arm to find out who did that shooting"——

Q. Go on, Doctor; state anything else that was said or occurred.—A. "And I assure you, gentlemen, that I shall do everything in my power, if my men did that, to find out who the culprits are." The major assured us of that repeatedly.

Q. Go on. If you remember anything else that occurred, say so; if not, say so.—A. At this moment I can't remember anything else.

Q. Of that conversation?—A. Of that conversation.

The court then took a recess until 11 o'clock, at which hour the members of the court, the accused, his counsels, the witness, the reporter, and the judge-advocates resumed their seats.

Q. Doctor, did this Citizens' Committee, of which you have spoken in your evidence and of which you were a member, call any person or

persons before them and request them to give any statements with regard to this shooting of August 13?—A. Yes, sir.

Q. Were you present when any of those statements were made by various parties?—A. On account of my executive duties I was in and out continually, but I remember some of the citizens who went before the committee; I don't remember having sat in the room and heard the whole statement of anyone—they were not under oath—the whole statement of anybody.

Q. You mean you didn't hear all of the evidence, or statement rather?—A. I did not; no, sir.

Q. Were these statements, at which you were present and which you heard made before the committee, under oath?—A. No, sir.

Q. When was this investigation, if we may so term it, by the committee begun?—A. The committee immediately began its work.

Q. On what day or date?—A. The day following the shooting.

Q. Which would be what day of August?—A. The 14th day of August, 1906.

Q. What was the condition generally, there in the city and amongst the parties or persons who were called on or who came before the committee and made these statements, as to condition of excitement or not?—A. The people were very much excited.

Q. What was the condition amongst the people generally of the city and of these parties who came before the committee as to fear or apprehension?—A. The people were in fear that the attack would be repeated.

Q. Do you know that of your own knowledge?—A. Oh, it was repeatedly spoken of, and though Major Penrose assured us he was taking every precaution to prevent any such outbreak and that he did not think it would occur.

Q. What steps did you officially take, as mayor of the city, with regard to posting armed men along the streets of the city as a measure of protection and defense from the then anticipated renewal of an attack from the post?—A. I took personal charge of the police, appointed about 20 or 30 special officers, picked men, men that I could depend upon.

Q. Where were they stationed in the city?—A. I stationed a cordon across the town from the river——

Q. That is, the Rio Grande River?—A. Yes, sir; from the river out Thirteenth street.

Q. By out you mean from the river up, away from the river?—A. Yes, sir. I stationed a picked man at the mouth of each street and alley, with positive instructions to halt anyone coming from the post or from the town after 9 o'clock at night. I took personal charge of the police and inspected the guard at least three times during the night.

Q. Until when did you maintain and keep in force and effect these measures looking to the protection and defense of the city?

By the counsel:

I would like to object again. What effect or bearing this has on the guilt or innocence of this accused, unless he can connect it up, I claim it is absolutely irrelevant and immaterial. Without something to connect this case, for a week or ten days after, it has no bearing whatever.

By the judge-advocate:

We take it, may it please the court, it is very material. It has been strenuously insisted by the defense in this case, and properly so, that the fact as to whether this shooting on the night of the 13th of August was an assault by the men of the battalion under command of the accused, as alleged, was in fact committed by them. The Government must prove that. That is, it must prove the corpus delicti, if I may use such an expression, just as, if a man were charged with the offense of murder, you must prove first that the party with whose murder he is charged died; that he was killed; that he was killed by the accused; and that he was killed under such circumstances as to constitute murder. Therefore, if we, by a series of facts, show to this court facts and circumstances occurring not only at just before and after this assault up to and including the time that this battalion was relieved from garrisoning Fort Brown, and that the citizens had any reason to apprehend a renewal of the attack which we claim they made on the night of the 13th, to that extent each and every one of those facts and circumstances are pertinent and are relevant to the proving of this corpus delicti—that is, as to whether this assault was made by the men of that command. And I propose to go on by this witness and show that such was the fact. That this cordon of armed men, this armed body of men, consisting of the constabulary of the city, together with the posse comitatus called into being and action by this witness under and by virtue of his authority as a magistrate, acted for the very purpose of preventing a recurrence of the acts of the night of the 13th of August, and that that vigilance was never relaxed for one moment, either by himself or those under his command, until the battalion of the Twenty-fifth Infantry was relieved from garrisoning Fort Brown.

By the counsel:

Now, may it please the court, this has apparently assumed a serious turn in the mind of the distinguished assistant counsel and it therefore behooves us to remind the court first as to what is alleged against this accused, Major Penrose. He is charged in the first specification, you will recall, with failing to do something between the hours of 12 midnight and daylight on the night of the 13th and 14th of August last, and in the second specification he is charged with another failure during this same period. Now while the events that led up to this are anterior to this time, might be considered as a part of the corpus delicti, assuredly the action of this mayor, based upon his opinion or belief, can have absolutely nothing to do whatever with what this client of ours did that night. If Major Penrose was in any way connected with the city, officially or unofficially; if he had anything to do with the stationing of these policemen, may it please the court, why it might have something to do; it might be relevant, we admit that, but Major Penrose is not charged with any such thing. It is absolutely—even if we grant everything the distinguished counsel claims, it would not for one minute tend to show whether this accused was guilty or not guilty; it would at best show what this witness, Mayor Combe, believed about the case; We don't want his belief. We want to know what he saw. We want to know the facts and nothing but the facts, and we want to know those facts in so far as they relate to the offense committed by this accused. He is not charged with the murder of anybody—not for a moment—he is charged distinctly with a military offense. We insist upon the ruling of the court as to whether this is admissible. We claim it is incompetent, irrelevant, and immaterial.

The accused, his counsels, the witness, the reporter, and the judge-advocate then withdrew and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed to announce the decision of the court, that the objection is not sustained. The question will be answered.

Q. (Question repeated.) Until when did you maintain and keep in force and effect these measures looking to the protection and defense of the city?—A. Until the battalion of the Twenty-fifth Infantry stationed at Brownsville was relieved.

Q. How was the battalion of the Twenty-fifth Infantry relieved?—A. It was relieved by a company of the Twenty-sixth Infantry, commanded by Captain Preston.

Q. How long, how many days, rather, more or less, after the occurrence of August 13 was this?—A. I can't say positively.

By the Counsel:

I want the court to understand that we object to all of this examination as to that matter. We don't care to have the court pass on each one, but we want it understood that we do object to going into this collateral matter at all.

Q. More or less, how many days after the 13th was it that Captain Preston, of the Twenty-sixth Infantry, with his company, relieved the battalion of the Twenty-fifth, under command of Major Penrose; approximately?—A. About eight days.

Q. These statements about which you have testified as having been made by these different persons before the Citizens' Committee you state were not made under oath; that is, those you witnessed were not made under oath?—A. They were not.

Q. And it was during this period of apprehension and excitement that you have related, within a day or two after the occurrences of the 13th, these statements were made during that period?—A. They continued to be made for several days after the committee started its work.

Q. But the battalion of the Twenty-fifth was still there?—A. Yes, sir.

Q. Did you ever have any conversation or conversations with Major Penrose with regard to the conduct of the men of his command prior to August 13, aside from the Evans conversation, and if so, how long before August 13?—A. I was in daily conference—you mean before August 13?

Q. Yes; before August 13, aside from the Evans conversation, how long before August 13?—A. I had several conversations with Major Penrose, but I can't fix the dates.

Q. How long after he and his command reached Fort Brown, more or less, how many days?—A. I called on Major Penrose shortly after he arrived there, and in course of conversation I spoke highly of the conduct of colored troops generally, as I had served with them.

Q. Had no reference particularly to this command?—A. Yes; I did have; part of my conversation had reference to men of his command prior to any of these occurrences.

Q. What did you say to him?—A. Major Penrose asked me about the conduct of his men, and I said as far as I knew, at that time, there was nothing against them or that I was pleased with the conduct; something to that effect. That was in my first visit.

Q. How long after their arrival there? You have already stated they arrived on the 28th of July.—A. Yes, sir; three or four days after the arrival of the battalion I had a conversation, speaking generally of colored troops.

Q. Do you remember the date of this so-called Tate trouble, the alleged trouble between a customs inspector, Fred Tate, and an enlisted man of that battalion of the Twenty-fifth Infantry?—A. Yes, sir.

Q. When was that?—A. On the 5th of August, 1906.

Q. Did you have any conversation with Major Penrose after the 5th of August up to the conversation with himself and Evans touching the assault on Mrs. Evans, which was held on the 13th of August? Between the 5th, when you learned of the Tate trouble, and that?—A. I had another conversation; yes. I met Major Penrose several times. We were on very friendly terms.

Q. Did you discuss this Tate matter?—A. Not in detail.

Q. After the arrival of this battalion of the Twenty-fifth Infantry at Fort Brown on the 28th of July, and prior to August 13, did you give any instructions to your policemen, that is either directly to your policemen, or to them through your chief of police, with regard to the treatment by them of these enlisted men of the Twenty-fifth?—A. Yes, sir.

Q. To whom did you give those instructions?—A. I issued a positive order to the chief of police that—I said to him, "Soldiers are soldiers the world around, and I want you to show the same consideration to the colored troops that you have always shown to the white troops."

Q. Had there been any trouble up to that time between the colored troops and the policemen of the city?—A. I believe some little trouble occurred between one of the police officers and a drunken soldier, but it didn't amount to anything; it would have occurred if white troops were there.

Q. Was that your reason for giving these orders, this slight disturbance that occurred?—A. It was one of the things, yes. I wanted the soldiers to understand that they would receive every consideration from the policemen.

Q. Doctor Combe, when you met Major Penrose at the sally port on the night of the 13th of August, and reported to him what had occurred, as you testified in detail yesterday, you state that he in reply expressed his disbelief or incredulity that this attack could have been made by men of his command.—A. Yes, sir.

Q. What did he do or say at that time as to any orders on his part, looking to the immediate inspection of guns or any other munitions or ammunitions?

By the counsel:

I am going to object to that question, merely to the form of it. This is a skilled attorney, and I object to his leading the witness. The witness is intelligent and of age. Now, he can call for that conversation, but that is not correct direct examination. We are going to object to it, and we do object now, and we request that the attorney be instructed not to lead the witness. May it please the court, this has been gone over, if you will recall, on direct examination. The witness has testified what he heard there and what was said, and he remembered no more, if I remember correctly, and I appeal to the record, if we can ever get it.

By the assistant judge-advocate:

We withdraw the question, may it please the court.

Q. At that time when you made these representations to Major Penrose at the sally port, what did the major say or do; that is, with regard to this matter, other than express his disbelief or incredulity that men of his command had done this shooting?

By the counsel:

I call for the record on that question so that I may form an objection. I think the ground has been covered. My distinct recollection is that the witness has testified to everything he can recall in direct examination. If he has not so testified——

By the assistant judge-advocate:

We withdraw the question, may it please the court.

Q. Doctor, you stated you heard certain pistol shots fired on that night?—A. Yes, sir.

Q. What were the nature of those pistol shots, evidently what were they?—A. The first pistol shots that I heard were 4 or 5 shots, as I

have already stated, which were followed by an irregular rifle firing. The next pistol shots that I heard were fired during rifle fire, which succeeded the first rifle fire that I heard, and during that fire I heard the boom or detonation of what appeared to me to be from a .45-caliber revolver.

Q. Did that come from the same locality or direction as the rifle firing or not?—A. Yes, sir; from the same direction—several shots. But it was during—mixed in with—the rifle firing. You could hear it distinctly in contradistinction to the sharp crack of the rifle.

Q. Who was present, if you remember, when you informed Major Penrose that his men had shot into the town and killed one civilian and wounded this officer?—A. There were several officers present, and my brother, Dr. Joseph K. Combe.

Q. Can you name any of those officers?

By the counsel:

I appeal to the record if that has not been answered. He stated explicitly who was there, if I remember correctly.

By the assistant judge-advocate:

I state to the court that the recollection of the judge-advocate and myself is that he mentioned others, but did not name them.

The record was then read to the court (p. 351 [174]).

By the counsel:

We impose no further objection.

Q. Can you name any that were present when you had this conversation with Major Penrose inside the sally port, that has just been read over? That is, name all that were present, if you can, you know.—A. I conversed—there were a group of officers; I conversed with them——

Q. You stated there were officers present when you had this conversation with Major Penrose, and I want you to name these officers, or any one of them, who were present when you had this conversation. Can you name any of these officers? That's what we want.—A. I am not positive.

By the counsel:

I would like the witness to state whether he said he "conversed with several" or not. He started to reply to the assistant counsel. Did he say "conversed with several" or "conversed with them?"

A. I was interrupted and I don't know whether I said "they" or "several." I don't know.

Q. Doctor, what became of these empty shells and ball cartridges and clips that you found and that you saw found?—A. They were locked up in the chief of police's office in his desk, with instructions to allow no one to touch them, and eventually, on order of the district court, given in custody of the sheriff of the county.

Q. When did you next see them?—A. The first batch I had I placed in this desk—the chief of police did, rather, and I saw them there when they were put there.

Q. When did you last see them?—A. I last saw them before the Purdy investigating committee.

Q. Who brought them there, before the Purdy investigating committee?—A. The sheriff.

Q. And were they turned over to Mr. Purdy?—A. They, with the bandolier.

Q. When did you first see that bandolier?—A. It was given to me by the chief of police.

Q. When?—A. The morning succeeding the firing, the shooting.

Q. What hour, more or less?—A. In the morning.

Q. About what hour, more or less?—A. I think it was about 9 o'clock or thereabouts.

Q. Was that kept by you, together with these shells, etc., as you have already stated?—A. I took them and put them with the other shells—you see, the shells were not given to me all at once.

Q. I know; you have testified. And was that bandolier as you last saw it also among the stuff turned over by the sheriff of Cameron County to Purdy?—A. Yes, sir.

Q. And you last saw it in the possession of Milton D. Purdy, Assistant Attorney-General of the United States?—A. Yes, sir.

Q. Was not that upon occasion of visit of Mr. Purdy, in company with Major Blocksom, to Brownsville, under instructions from the Executive?—A. Yes, sir.

Q. This bandolier—describe it, as near as you can.—A. I don't ever remember ever having seen one in the service; this is the first one I ever saw, and it was made of—it looked to me like khaki, or like canvas the color of khaki.

Q. Any name on it or any printing?—A. There was no name on it, but there was evidently an arsenal number or something of the kind. I am not familiar——

Q. Was there anything in the bandolier or any of the pockets, or were the pockets empty? I will ask you first, were there any pockets to that bandolier?—A. Yes, sir.

Q. Anything in those pockets or any of them, do you remember?—A. I don't remember.

Q. Look at these articles, please (handing witness some bullets). Examine them, please, carefully, first. I wish you would take them one by one and tell the court what each one is, and we will have it marked.

By the counsel:

Do you purpose to have this witness identify these as cartridges found at that time? The identical cartridges?

By the assistant judge-advocate:

Oh, no; it is for the purpose of showing the witness' knowledge as to the difference between the Springfield—between different ammunition, and also to show for the purpose of comparison. I shall ask him in a minute, after he points out what they are, as to how the shells compare with those found.

By the counsel:

Are you introducing him as an expert?

By the assistant judge-advocate:

No; not as an expert, but simply from his general knowledge; I don't take it he is an expert.

Q. Have you examined those?—A. Yes, sir; I have examined them.

Q. Tell the court what that is, please (handing witness one bullet).—A. That looks like the shell—it is a ball cartridge—a shell like the one I picked up and the other officers picked up.

Q. You say it is like that?—A. Yes, sir.

Q. How does it compare? Similar, exactly like it, or how?—A. As far as I can see, exactly like; and what impressed itself on my mind is this groove at the base of the shell.

Q. You say you found a ball cartridge in the clip, or did you?—A. I believe I testified so—that the empty shells, I didn't know whether it was in the clip—there was one ball cartridge.

Q. You don't remember one being in the clip. Well, did you fit, or attempt to fit, any of these empty shells or ball cartridges into a clip that you found?—A. Oh, yes; I arranged them that way, a great many of them; I slipped them in the clip to keep them together instead of keeping them loose.

Q. And they fitted well?—A. Yes, sir.

Q. Do you know whether or not that is a Springfield ball cartridge?—A. It is my opinion that is the Springfield cartridge used in the modern Springfield rifle.

Q. Look at that, please (handing witness another bullet). Tell the court what that is, if you know.—A. It looks to me like the old Krag cartridge.

Q. Why do you say, It looks to you?—A. It is bottle-shaped, it is steel-jacketed, and it has that flange or shoulder that the old Krag had.

Q. Did you find any shells like that?—A. No, sir.

Q. On that morning?—A. No, sir.

Q. Or did any come into your possession about this time?—A. No, sir.

Q. What is that, Doctor?—A. That is a clip.

Q. How does that compare with the clip or clips that you found in the vicinity of the Miller Hotel at 2 o'clock on the morning of the 14th of August? How does it compare?—A. It resembles it.

Q. To what extent? Slightly, or is it like it, or how?—A. Very much like it.

Q. Did you note or can you find any difference at all between it?—A. I am not an expert in such matters at all, but it looks to me the same as the clips I had.

Q. And that you last saw in the possession of Mr. Purdy?—A. Yes, sir.

By the assistant judge-advocate:

May it please the court, they are now offered in evidence and are handed to counsel for inspection that he may make his objection.

By the counsel:

I would like to have time to examine them before offering any objection, may it please the court.

The court then, at 12 o'clock m., adjourned, in order to enable the clearing up of the record, to meet at 10 o'clock a. m., February 13, 1907.

CHAS. E. HAY, Jr.,
Captain, Acting Judge-Advocate, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., February 13, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocates. The accused, his counsels, and the reporter were also present.

The reading of the proceedings of February 12 was dispensed with.

Mayor COMBE, being still on the stand as a witness, was reminded he was still under oath.

The assistant judge-advocate then asked the permission of the court for witness to amend an answer made by him in direct examination, which question witness evidently misunderstood.

There being no objection, witness was permitted to amend answer made by him to question (top of page 377 [186] of record) as follows:

Q. (Repeated.) Did you ever have any conversation or conversations with Major Penrose with regard to the conduct of the men of his command prior to August 13, aside from the Evans conversation; and if so, how long before August 13?—A. (As amended by witness.) I was in daily conference after the 13th.

By counsel for accused:

If the court will remember, we reserved the right to examine the shells. I would like now to have the opportunity to do so.

(Two shells and one clip, testified about yesterday, were handed to counsel for accused.)

(Portion of proceedings of morning of February 13, 1907. Charles E. Hay, jr., judge-advocate.)

CROSS-EXAMINATION.

QUESTIONS BY THE ACCUSED.

Q. Major Combe, did you ever see any gun using a clip cartridge? Are you familiar with guns using clip cartridges, at all?—A. I have seen the Mauser rifle and the Mauser clips, but am not familiar with them.

Q. That is, for the Mauser pistol and rifle combined, or for the Mauser rifle?—A. I have seen them both.

Q. Have you ever seen any other gun that uses a clip with the cartridge? Are you familiar with the Manlicher?—A. No, sir.

Q. Then you are not sufficiently familiar with the cartridges used in clips to distinguish between the various kinds?—A. Clip ammunition? No, sir.

Q. The only reason you gave, as I recall it—I appeal to the record—you were asked this question: "How does it compare with it—similar, exactly like it, or how" (referring to the Springfield cartridge)? Your answer was, "As far as I can see, exactly like; and what impressed itself on my mind is this groove at the base of the shell." And you testified that that groove was for the purpose of fitting it into a clip.—A. To my belief.

Q. You could not tell whether that shell was any different from a Manlicher shell, for instance?—A. I have never seen a Manlicher shell.

Q. Did you ever see a Winchester cartridge—that used the steel-jacketed bullet, I mean?—A. The ones I have seen are the soft nose, with the steel jacket.

Q. You have never seen the Winchester ammunition with the steel-jacketed bullet all over?—A. I do not remember, sir.

Q. As a matter of fact, did you ever see any steel-jacketed bullet other than the kind you say were used in the Krag-Jörgensen rifle?—A. Yes, sir.

Q. Which?—A. The Krag-Jörgensen and the Mauser and the Mauser pistol and the Colt clip.

Q. Now, you were asked yesterday, "Why do you say it looks to you?" speaking of the Krag. You said previously, "It looks to me like the old Krag," and you were asked that question, and you answered, "It is bottle-shaped, it is steel-jacketed, and it has that flange or shoulder that the old Krag had." As a matter of fact, are there not many steel-jacketed bullets that are bottle-shaped, that have a flange, that would suit that description?—A. The Mauser is shaped like it and the Winchester I have just spoken of is shaped like it; those are the two.

Q. How do you distinguish that from the two shaped like it? Do you mean to say that was a Krag and not one of these others shaped like it?—A. It might be a Mauser.

Q. Yes. As to the clips, you are not familiar with clips at all?—A. No, sir.

By counsel for accused:

We object to the introduction of these as evidence at this time, and we base our objection solely upon the ground that they have not been properly identified, and therefore are not subject to use for comparison before this court. We do not object to the introduction of this class of evidence if it is properly identified and introduced before the court in proper form. We recognize at once that that is a very proper species of evidence, but up to the present time, and as identified by the witness, we object to its being so used.

By the assistant judge-advocate:

May it please the court, in order to save time, we will, with the permission of the court, withdraw these and later seek to introduce them. They will be withdrawn for the present.

Q. Major Combe, let us go back to that visit of yours to Major Penrose, in company with Mr. Evans. It was on what date?—A. It was on the 13th day of August, 1906.

Q. And about what hour?—A. Between 5 and 5.30.

Q. And you met him, as I understand, on the walk near the hospital.—A. There is a bridge almost immediately midway between the commanding officer's quarters and the hospital.

Q. Does that place show on the plat, Major?—A. The hospital is not there; I only see the officers' quarters and the road. I think I could point it out.

Q. Give us an idea where that was, will you?—A. This is the walk in front of the officers' quarters there. About there (indicating a point not far from the road leading from the walk before the officers' quarters to the hospital).

Q. Where is the hospital with respect to that?—A. The hospital road runs to the right.

Q. You went out there in your capacity as mayor of the city of Brownsville?—A. Yes, sir.

Q. So it was an official visit to the commanding officer on behalf of and in company with Mr. Evans?—A. Yes, sir.

Q. You heard Mr. Evans tell his story?—A. Yes, sir; as I stated yesterday, he was excited and told Major Penrose the circumstances.

Q. I wish you would tell us everything, as nearly as you can, what Mr. Evans said in complaint to Major Penrose, or otherwise. Give us the whole conversation, as near as you can.—A. After introducing Mr. Evans to Major Penrose he immediately began to tell him, in an excited manner, what had passed downtown. Mr. Evans was very much moved; told him that—he said that his wife had come home on horseback from the river, I believe, where he had been left as a quarantine guard or something of the kind, and rode home; rode into the back gate and dismounted, and that a man—his wife had said a colored man in the uniform of the United States Army—grabbed her by the hair and threw her to the ground; that she screamed and lost consciousness, fainted. The conversation lasted some little time, but that is the gist of it, as near as I can remember.

Q. That's what Mr. Evans said. Did he say nothing about any other subject at the time?—A. Yes; he spoke of the conduct of the men.

Q. Tell us about that too.—A. About their cursing and their disorderly conduct.

Q. Where?—A. In front of the Evans house, that it was succeeded; that it happened one evening and some member of the household asked them not to use such language, and that they repeated it another evening.

Q. Do you remember what the language he said the men used was?—A. No; except that it was profane and indecent; I don't remember.

Q. Is that all that he said about that that you can recall?—A. He said something about a man running out half dressed to the help when he heard this lady scream; that he was taking a bath and he ran out.

Q. Ran out from where, Major?—A. From a room near by, I don't remember where. He also said that his wife said the man had been crouching to one side of the back steps.

Q. Back steps of what?—A. Mr. Evans' house.

Q. Didn't he say what house this man ran from?—A. I don't remember that; said he came out of a room.

Q. Have you at any time any distinct recollection of where that was from?—A. I can not tell.

Q. There is no impression in your mind about it at all? That is, the house from which the man came?—A. At present; no, sir.

Q. What did Major Penrose say to Mr. Evans in regard or in reply to the complaint about this man whom he alleged had taken his wife by the hair and thrown her down?—A. Before going further, I would say to the counsel for the accused that I remember just one other thing. Mr. Evans said his wife was suffering a great deal from the shock; that she was now confined to her room.

Q. (Question repeated.)

A. Major Penrose listened to the complaint, and, as soon as Mr. Evans was through, he showed feeling, as I have said before, and said, "Mr. Evans, I can hardly believe that a man of my command would do such a thing." He said further, "This is outrageous; this is an awful outrage, and if any one of my soldiers has done this, I shall certainly do everything in my power to find out who the man was," or

words to that effect. He walked up and down and showed feeling. Said, "I am very, very sorry, sir, that this has occurred."

Q. Is that all you recollect of what he said? Major Penrose, I mean.—A. Yes, sir. Major Penrose asked Mr. Evans why he thought this act was committed by a soldier of his command, and Mr. Evans went on to explain why he thought so.

Q. And said what?—A. And he said what I have said before—that his wife had said it was a colored man dressed in the uniform of the United States Army; that he wore a hat—a campaign hat—had leggings on, and mentioned the word khaki.

Q. Now, will you think carefully and tell us if there is anything else Major Penrose said in connection with that incident, any further conversation. Well, did Major Penrose ask him for a description of the man? Do you remember anything about that?—A. I do not remember otherwise than the question which Major Penrose asked before, how did he know.

Q. As a matter of fact, did not Major Penrose ask him for a description, and did not Mr. Evans reply, in substance, that he was a large dark man, and did not Major Penrose say, in reply, that that fitted so many of his men it would be impossible for him to identify him? Do you remember any such conversation?—A. I do not remember it.

Q. Will you say he did not so state or that that conversation did not occur?—A. No, sir; I will not say that.

Q. It might have occurred, then, and slipped your memory?—A. Yes, sir.

Q. What did Major Penrose say in reply to the complaint about the men using this obscene language around Mr. Evans' place?—A. Whether the major said what I am going to say now in that conversation or a subsequent one—he did say this—"If that matter had been brought to my attention sooner I would have taken steps to rectify it." I am inclined to think that Major Penrose made that remark in a subsequent conversation.

Q. With you?—A. With me.

Q. When Mr. Evans was not present?—A. Yes, sir.

Q. Then you did have a subsequent conversation with Major Penrose at or about that time?—A. After that occurrence; after the 13th, when I called on him.

Q. Didn't you have a private conversation with Major Penrose that day, after Mr. Evans had told his story?—A. I had a short conversation with Major Penrose while Mr. Evans was standing at a short distance from me—right near us—and after that conversation we walked away and had another one.

Q. Was that before or after the conversation that you have been narrating? That is to say, did you and Major Penrose walk away from where Mr. Evans was before or after the conversation you have been telling about?—A. The conversation that I have been telling about, the first one, in which I spoke of, if Major Penrose had known this had taken place. I think in my mind this was at his quarters.

Q. You didn't get my meaning. I don't want you to get confused in regard to conversations. The conversation I have in mind is what you have been telling us about what Mr. Evans stated, and you remember there was two phases of it—first, about his wife, and second, about the men using this language. That conversation was a complaint of Mr. Evans to Major Penrose.—A. Yes, sir.

Q. Now, then, did you walk apart with Major Penrose before or after that conversation?—A. After that; but I had a conversation—you see I had done no talking practically while Mr. Evans was speaking to Major Penrose, and then I made a few remarks, and then we walked away.

Q. Didn't Major Penrose give any suggestion whatever to Mr. Evans in regard to what he could do in connection with the complaint about the men talking or using this obscene language?—A. I have tried to fix that in my mind, but I can't remember.

Q. Then I will ask you if it isn't a fact that Major Penrose said substantially in regard to that: "I can prevent that by putting a guard there and prevent men congregating there?"—A. I do not remember that.

Q. He did say something to that effect?—A. I do remember that.

Q. Was that in the conversation when you were all three present, and was it in response to Mr. Evans's complaint about the men using obscene language?—A. Yes, sir.

Q. Now I wish you would recall for us, as nearly as you can, just what was said by yourself and Major Penrose when you left Mr. Evans and walked apart from where he stood.—A. I can not recall what Major Penrose said and what I said, except that we spoke generally for a few minutes about this thing, he expressing his indignation and I saying what I knew about the matter.

Q. Now, Major, wasn't it, as a matter of fact, during this time, when you and Major Penrose were together and apart from Mr. Evans—when you had walked away—that you made the suggestion about his keeping his men out of town that night?—A. No, sir. I have always been positive that our conversation was when we three were together or near together. I have never been able to——

Q. Now when was it that Mrs. Evans claimed she was assaulted?—A. On the night of August 12, 1906.

Q. And this complaint was not made until the following day?—A. The following day.

Q. What time that night was this alleged to have occurred?—A. I heard next morning that it took place about 9 o'clock.

Q. Where did Mr. Evans live?—A. He lived in what we term the lower part of town, the eastern part of town, near the garrison fence.

Q. Show us on the map. Will you go to the map and show the court about where he lived?—A. It is way down in this part of town (pointing toward the upper portion of the map, about Adams street). Here is the gate of the garrison; this house is situated to the right of the gate as you go out of the post; you go out here at the old gate. The house is situated here. This is the laundress' quarters, I think. This, I think, is the old gate, and this house is—I am looking for the street this gate opens into.

Q. It is not on there.—A. Oh, well, that gate opens into a street, and that house is to the right of that street.

Q. About how far from this old garrison gate is that house located?—A. It is diagonally away from the gate.

Q. In a direct line from the garrison wire fence? I understand the wire fence——A. This is the wire fence (indicating all that part east of the road that passes in front of the guardhouse). In a direct line from that fence past there to the Leahy house—to the rear of the

Leahy house—it must be very nearly 100 yards, I should think; that is a diagonal line across; it may be a little under.

Q. Are you familiar enough with the plat of the city to describe the shape of the block in which her house is located? Is it like any of these on the map?—A. No, sir; it is irregularly shaped.

Q. Does her house face toward or away from the garrison?—A. It faces away from the garrison.

(Judge-advocate here asked that Leahy house be described, in order to keep the record straight on that point.)

A. I will say Leahy residence instead of the Leahy Hotel.

Q. As a matter of fact the Leahy Hotel, which is down on Fourteenth street, is an entirely different piece of property, but the Leahy residence you refer to is owned by the same Mrs. Leahy, is it not?—A. She used to live there.

Q. Was that block shaped at all like any of these you see here?—A. No, sir.

Q. Like none of these?—A. It is nearer the shape of this block (indicating block facing on Elizabeth street, Fourteenth, the alley, and Fifteenth street, and which contains the telegraph office and the Cowen house).

Q. The house faces away from the post?—A. Yes, sir.

Q. That is, it would correspond with what is Fourteenth street?—A. Yes, sir.

Q. Do you remember the streets that surround that block?—A. Here is Adams street and this road——

Q. That is Fifteenth street?—A. And this street here and then there is an alley.

Q. What is this street called?—A. I don't remember the name.

Q. Are there any other houses in that block?—A. Yes, sir.

Q. How many?—A. There is a house right on the corner.

Q. And that is used for what purpose?—A. Now used for furniture, used to be an old undertaking establishment.

Q. Upholstering establishment?—A. Yes.

Q. Anyone live in that house?—A. A man by the name of Fairman and son.

Q. Any other houses in the block?—A. An outhouse at the corner of the alley.

Q. Anybody live in that?—A. It is a stable and outhouse.

Q. Then the house occupied by Mrs. Evans and this upholstering establishment are the only ones in that block?—A. Yes, sir.

Q. Where are the entrances to the Evans house?—A. On the front of the house, facing the street.

Q. Any others?—A. The rear entrances.

Q. Then there is an entrance there toward the garrison?—A. Yes, sir.

Q. Is there an entrance from the west?—A. There is a small side door, I think.

Q. Does not open on the alley?—A. No; it opens on the yard.

Q. Are there any more than two entrances to it? Isn't there a gate?—A. There are two front doors.

Q. Isn't there an entrance from each street or alley that you can get into the yard or the house?—A. I don't think there is an entrance from the alley.

Q. You are not positive?—A. No; I never examined the house carefully.

Q. Do I understand there is an entrance into the house or yard from each of the other streets and not from the alley?—A. There is one from the side toward the garrison gate. There is a side gate on this side right here (indicating to the west)—Adams street.

Q. Are you sure there is not more than one other residence place on that block?—A. No, sir; there's just the Leahy residence and this undertaking establishment are the only—it's all one house.

Q. That is, the Leahy residence, so called, and the upholstering establishment are all one house?—A. No, they are separate; there are two houses in that square.

Q. Do you know whether anybody else lives in that block anywhere than the Fairman you speak of and Mr. and Mrs. Evans, or did live there at that time?—A. Not of my personal knowledge, but Mr. Evans said a Mrs. Byrom, or something like that.

Q. Where did she live and who was she?—A. I think she lived in the same house with the Evanses.

Q. You said something about this man being concealed under the step.—A. I said that Mr. Evans said that Mrs. Evans said.

Q. Not direct evidence, but that is the report that came to you?—A. Yes, sir.

Q. Do you know what steps this was?—A. Yes, sir; I know which they are.

Q. Which ones?—A. The back steps that lead down from the house.

Q. Then it would be toward the garrison side?—A. Toward the garrison side.

Q. When did this first come to your knowledge?—A. The day following the incident.

Q. About what time?—A. Colonel, I don't remember the hour.

Q. About.—

The court here took a recess until 11 o'clock a. m., at which hour the members of the court, the accused, his counsels, the reporter, the witness, and the judge-advocates resumed their seats.

Q. Major, let's come back or let's advance a little and take up what occurred at the time you and your brother, Dr. Joe Combe, came into the garrison on the early morning of the 14th of August last, under the escort of Company D of the Twenty-fifth Infantry and Captain Lyon. About what time did you say that was?—A. I said it was about 1 o'clock or a little after 1, to the best of my belief.

Q. You think it was a little after 1, or before; how did you note the time, or did you note it?—A. No, sir; I did not note it.

Q. You just speak from recollection and from what you assumed was the hour?—A. Yes; the hour.

Q. The hours were not called by the sentinel, or nothing to indicate it to your mind?—A. No, sir.

Q. I believe you said there were two or three officers present there?—A. Yes, sir; I did say that.

Q. There might have been others present besides these two or three officers, and your brother and yourself and Major Penrose? There might have been some others?—A. I don't think there was anybody else.

Q. Was Captain Lyon one of these officers?—A. Yes; he marched in the post.

Q. He remained there? Was present at the conversation?—A. Yes.

Q. And you know Lieutenant Grier, do you?—A. Yes, sir.

Q. Was he present?—A. I think he was.

Q. And do you know Lieutenant Lawrason of that command?—A. Yes, sir.

Q. Was he present?—A. I don't remember, but I remember Major Penrose mentioning Lieutenant Lawrason's name when Captain Macklin came up.

Q. What was the condition of the command as you saw it? Did you take it in?—A. Captain Lyon's company marched into the gate—Captain Lyon, Doctor Combe, and myself at the head of the column—we marched in, and they maintained that formation inside the sally port.

Q. Did you see any other members of the command?—A. What do you mean by other members of the command?

Q. There were two other companies in the garrison, were there not?—A. Some of them were to the left of us.

Q. Could you see them?

At this point counsel for the accused was called from the room and the court took a short recess until 11.15 o'clock a. m., at which hour the members of the court, the accused, his counsels, the reporter, the witness, and the judge-advocates resumed their seats.

(Last question repeated.)

A. I saw some of them; they were in irregular order, stretched along the fence.

Q. You mean the fence or the wall?—A. The wall.

Q. About how far were they from the wall?—A. They were right near, to the left.

Q. Were they nearer the barracks or the wall?—A. They were nearer the wall.

Q. What position were the men in, do you remember?—A. I just saw a few; they were strung out.

Q. Were they standing on their heads, or kneeling down or sitting down, or standing up, or how?—A. A soldier does not generally stand on his head, Colonel.

Q. I know that, but what was his position?—A. Like a soldier, with his gun in his hand.

Q. Standing up or sitting down?—A. Standing up.

Q. Were these men in addition to Company D?—A. Some men to the left of D. D Company was in column of fours.

Q. Fours or twos?—A. We marched in, I think, in column of fours, as near as my——

Q. Now, when you say to the left do you mean as you came into the gate they were to the left?—A. To the left of the entrance.

Q. Did you see any to the right as you came in, do you remember?—A. I do not remember.

Q. How long had you talked before Captain Macklin came up?—A. I must have been standing there twenty minutes.

Q. Coming back to that other question, I want it cleared up. Were

you told by Major Penrose, or anyone else, what dispositions were made of the command that night? I mean military dispositions.—A. Nothing at all, except when Mr. Evans and I went to see him.

Q. No; I am talking about that night, Major, when you came in through the gate with Captain Lyon. I want to know whether you were told or knew in any way what disposition had been made of the troops of the command of Major Penrose?—A. Nothing, except he said something about verifying the companies.

Q. But you don't know whether all the command were stretched along that wall or not?—A. He said to Captain Macklin, "Sir, you will take command of your company, relieve Mr. Lawrason; he is along the wall."

Q. Yes; but that don't bring out the point. I want to get at whether or not you knew, Major—whether or not he had disposed of his whole command there at that time. Did you know it?—A. I did not; no. Except that he stated they were along the wall.

Q. Major Penrose himself told you they were along that wall?—A. Yes, sir.

Q. Did you understand the object or the purpose for which he had stationed them along there?—A. Except that this matter had occurred, and—that's all.

Q. Well, we will get at it in another way. When you came up, as I recall, you said you shook hands with Major Penrose.—A. I did.

Q. And told him what?—A. I told him that some of his men had attacked the town; that a man was killed; that the lieutenant of police was badly wounded; that his horse was killed and quite a number of houses had been shot into. And he answered me and said, "Doctor Combe, I can hardly believe this. It has been reported to me that the citizens fired on the post."

Q. Then did it occur to you at that time that this disposition was made because he believed that the citizens had fired on the post? This disposition of his troops, I mean.—A. If he thought so, I suppose he took that——

Q. Have you any doubt in your own mind, from the conversation, that he did think so at the time?—A. I think Major Penrose properly thought that the citizens had fired on the post from the report which he had received.

Q. And that he had made this disposition of troops with the idea prevalent in his mind?—A. Possibly; yes.

Q. As a matter of fact, didn't Major Penrose adhere to that until he saw the cartridge clips, as far as you know?—A. He may have. I did not see him until the next morning when I gave him the clips.

Q. Didn't you testify you saw him when you came in to sick call?—A. He was standing—I saw him in front of the company——

Q. But you had no conversation with him?—A. Not until I saw him at 9 o'clock.

Q. What occurred in that conversation? That's what we want to get at.—A. I have already related all that I recall.

Q. I want to get at it in this phase of the examination, too. Limit yourself to just what you said to Major Penrose, as far as you recollect.—A. In substance, I have just told you a minute ago.

Q. That was the substance?—A. More or less, that was the substance.

Q. These people that you mentioned as being present in this conversation, were they present at all of the conversations?—A. No, sir; the major and I walked over to the road.

Q. That would be toward D Company?—A. Toward D Company, on that road that flanks the wall within the post.

Q. There is a road between the barracks and the garrison wall?—A. Yes, sir.

Q. You walked off on that road?—A. Yes, sir; just a little distance.

Q. Do you remember what part of the conversation occurred when you and he were alone there?—A. No, sir.

Q. You don't remember?—A. No, sir. I insisted that the soldiers had done it and he didn't believe it.

Q. He insisted on his belief that the shooting was from the other direction?—A. Yes, sir.

Q. And did he insist on that belief up to the time you left?—A. To the best of my knowledge; yes, sir.

Q. Now, then, that's substantially all that was said, that you can recall, up to the time you started away?—A. Practically, except that I had another conversation with another officer which does not bear on this at all—with Captain Lyon.

Q. It was right there—Major Penrose was there; let us have what it was—we would like to have what it was.

Q. (By Judge-Advocate.) Was Major Penrose there?—A. (By witness.) Major Penrose was not there; no, sir; and it does not bear on this case.

Q. Well, what did you say to Major Penrose just as you were leaving, after this?—A. I said to him, "Major, I consider it very necessary that you keep your men and officers within the post." And he said to me—I gave my reasons for it; said it was dangerous; the feeling of the people was such I considered it dangerous for them to go to town—Major Penrose said to me, "Major Combe, I shall certainly take those steps and shall allow none of my officers or men to go into Brownsville, and you take the same precaution and do not allow any of your citizens to come into the post. You may come in at any time of the day or night and I shall so instruct my sentries."

Q. Do you remember saying anything about what people downtown were doing, or what they had done, at this time?—A. At this moment I do not recall what I said.

Q. I will make it a little more distinct, Major. Did you at this time state, in substance, that it was not safe for the men to come downtown and that you had just avoided having about 300 of the citizens of the town make a rush on the post—300 armed citizens of the town make a rush on the post?—A. I did; but I now feel I exaggerated the number. I don't think there could have been more than 150.

Q. Did you tell him at that time that you had by your personal efforts prevented 300 armed citizens of Brownsville from rushing the post?—A. I do not remember the number I said, but I did say a great many citizens. They asked me to lead them down.

Q. And you spoke of armed citizens?—A. They were all armed, nearly, with whatever they could get hold of.

Q. Major Combe, when was it, according to your best recollection, with respect to the time you came—don't you know—into the

garrison that night with Captain Lyon, that Major Penrose said, "Verify your commands?"—A. Shortly after I came in he said, "Gentlemen," speaking to his officers.

Q. "Verify your commands." Did they do so?—A. I do not know.

Q. Have you any reason to doubt that they did so?—A. An officer generally obeys his orders.

Q. You have no doubt in your own mind that these companies were verified at the time?—A. I don't know, Colonel; the order was issued.

Q. Major Penrose issued the order?—A. Yes, sir.

Q. Were the men kept in the post that night—the soldiers, I mean?—A. To the best of my belief, after the occurrence.

Q. I mean from the time you yourself came there and had this conversation with Major Penrose the men of that command were kept in, as far as you know?—A. To the best of my belief and knowledge; yes.

Q. You assumed from that time on, or shortly after that, the position of chief of police—took personal charge of the police?—A. Yes.

Q. How many extra policemen did you put on that night?—A. That night I didn't put on any extra policemen; I simply requested certain citizens to arm themselves and assist me.

Q. But did they act, generally speaking, in the capacity of policemen?—A. Yes, sir.

Q. If any soldiers had been found downtown that night you would have known of it?—A. We were on the qui vive.

Q. It would have come to you, absolutely?—A. Oh, yes.

Q. Then you are perfectly free in your own mind that they did not come down; you would have known of it?—A. I feel that, yes.

Q. As a matter of fact, were the men of the command allowed downtown, or did any of them come downtown, from that time until they left the post?—A. Not to my knowledge.

Q. Now, as a matter of fact, was not one company—Captain Lyon's company, D—sent down to pack the train?—A. Oh, yes; I except that.

Q. But, aside from the times they were under the absolute control of officers, from 1 o'clock that night, when you saw Major Penrose, there was no report came to you, from any official sources or otherwise, that Major Penrose's command was not restrained or held in the post?—A. They were restrained, for Major Penrose said he would shoot—made use of that expression, that he had issued positive orders and would shoot any man that disobeyed instructions.

Q. That night?—A. Yes.

Q. So he was positive enough in his position to let the men know that any man that violated that order by going down town would be shot?—A. Yes, sir.

Q. And, as far as you know, that order was not withdrawn during the time the command stayed there?—A. As far as I know it was not withdrawn.

Q. You didn't see the command any more that night? I mean Major Penrose's command; you didn't see it any more that night?—A. No, sir.

Q. When you came in next morning, you came in to attend sick call officially?—A. I went to the hospital.

Q. What time did sick call go, Major, as you recollect?—A. I think it was 7 o'clock.

Q. And you were coming in about that hour to be on time for sick call?—A. I may have been a little earlier or a little later on account of the excitement.

Q. Yes; I make no point of that.—A. Major Penrose had said to me the night before—I said I might be down late to sick call.

Q. Now, you said in answer to a question—I had better read your previous answer—you said, "I know that D occupied the barracks to the right and I think that B Company occupied the barracks to the left." You were then told to go on, and made reply as follows: "As we drove around in front of D Company barracks I saw the company in front of the barracks cleaning their guns. I saw two officers there. I remember they were officers because I saluted as we went by." Tell this court what your impression was of the cleaning of those guns; was the whole company at it?—A. In my opinion the whole company were there.

Q. At cleaning the guns?—A. They were not at attention. There were rags on the steps, I remember distinctly, and I actually saw them cleaning guns.

Q. Now, was it the men or the officers that you actually saw cleaning those guns?—A. It struck me it was the men.

Q. Now, as a matter of fact, may it not have been the officers running rags through the guns? I want your best recollection on that, Major, because it is important.—A. I don't think so; I don't think I saw the officers cleaning the guns. My brother remarked to me, "What do you think of that?" or something of the kind. I did not put it in my testimony. I did not think anything of it at the time.

Q. Are you sure it was D Company? Might it have been B Company?—A. I don't know the men individually of any of the companies. They all look alike to me—and it was colored troops.

Q. It was one of the companies?—A. One of the companies, and it was in front of D Company, and they were not in regular formation.

Q. The impression made on your mind at the time was that they were trying to cover this thing up?—A. No, sir; I never thought anything of the kind. They were cleaning their guns. I didn't know whether it was inspection or not.

Q. As a matter of fact, from your five years' experience, do you not think it rather unusual for men to be cleaning their guns at inspection?—A. Before inspection possibly they were doing it, but it is unusual; yes.

Q. I understood you to say yesterday that you had had no experience directly with troops; your experience has always been staff duty?—A. Most always at headquarters.

Q. Practically the same as you were at Tacloban?—A. I was chief surgeon; yes.

Q. But you didn't intend then to give the impression to this court yesterday, when you spoke of the men cleaning their guns, that it was to hide or conceal anything that may have been done the night before?—A. I didn't know what it was done for, Colonel.

Q. Do you intend to give that impression? I understood you to say you did not.—A. I saw them cleaning their guns, and I didn't know whether it was a regular order or what it was. I would rather not answer that in the negative and say no, I did not think they were doing that, because I did not think anything about it at the time.

Q. Do you intend by your evidence to give the impression to the

court——A. I was asked that question and I have to answer it; what I saw.

Q. Do you now intend to give that impression to this court?—A. I don't know whether I ought to answer that question, Colonel.

By the assistant judge-advocate:

May it please the court, we think that it is objectionable. I think it is proper for the witness to state facts—that he has done—and then let the court, sitting as court and jury, draw their own conclusions. I don't think it competent to ask this witness did he conclude this or that; I think it would have been as competent for us to have asked him that yesterday. He states what he actually saw, and then it is for the court to draw their conclusion. We think it competent to state something he has seen or done, but not to give his conclusions.

By counsel for the accused:

This is not calling for a conclusion from the witness. The gentleman has stated the law accurately. This is not a conclusion; it is what he intends to say by this language, and we have a right to ask that; he uses language, and we have a right to know what he means by that language. It is not conclusion; it is what you mean by this language. It is perfectly absurd to say I can't ask this witness what he means by this language. Every language is subject to two or three interpretations, and this language certainly is, and we have a right to know, and we insist on knowing, what this witness means to say by that language, and that's all we ask.

By the judge-advocate:

The point we wish to make I am positive is not clearly understood by counsel for the defense. Counsel now asks him what he wants the court to believe; that is, what are you trying to bring out by this statement of facts. The witness is not prosecuting; he is not trying to bring out any particular point; he has been asked to state a fact, which he has done clearly, and he should not be called upon to make an argument against or for the defense. That is the point we wish to make.

(At request of counsel the question asked was read over.)

By the counsel:

Now, may it please the court, I don't want this court to think for one moment that this witness is antagonistic; I don't so consider him; on the contrary, I think he is evidently trying to tell the facts as he remembers them. There is no question in my mind about that and has not been from the start. When I asked him what he means by this language, what he meant to convey, he calls the attention of the court that "my brother says, 'what do you think of that?'" his whole manner indicating that it refers to something that has gone before, and I want him to say positively what impression he had at that time. We are entitled to his opinion; we are not bound down to "did you see that" or "did you see this." We are entitled to the impression made on his mind at that time, and we can ask him in a thousand different ways. We want to know the truth. If Major Combe believed at that time that those men were cleaning those guns at that time to cover up these things, I want to know it; and if he don't believe it, for heaven's sake let him say so. We don't want to cover up anything in the matter. If we can't explain it—and we can explain it, that's what we are going into—if we can't explain it afterwards, Major Penrose will have to take the consequences. But it was simply what impression was created in your mind at that time. He saw those men doing what he admits to be an unusual thing at inspection; he has had five years' experience, and we want to know, and we want you to know. That's all there is to it. We insist on the answer.

The accused, his counsels, the witness, the reporter, and the judge-advocates then withdrew and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce the decision that the objection be not sustained. The question will be answered.

(Question was reread to witness.)

A. I am obliged to say that the occurrence in my mind was suspicious.

Q. You haven't any doubt in your mind that all the men of that company were cleaning their guns at that time, have you?—A. No; I can't say exactly the number.

Q. Tell us, Major, approximately.—A. I did not see them all cleaning their guns.

Q. We want to know what your recollection is.—A. It struck me that I saw several of them; possibly three or four.

Q. Then when you said, "I saw the company in front of the barracks cleaning their guns," you didn't mean to say the whole company?—A. The whole company? No, sir; I saw some of the men.

Q. You simply saw the company out there, and you saw three or four of the men cleaning their guns?—A. Yes, sir; and some rags out there.

Q. And the impression made in your mind, as you stated now, that it was a suspicious circumstance?—A. Yes, sir.

Q. You said there were officers there present; about how many, do you remember?—A. To the best of my belief and remembrance there were two there.

Q. Yes; I notice here in the direct examination you said, "I am not sure, but there were two officers." You were not sure as to the exact number, but there were two officers?—A. Yes, sir.

Q. There might have been more?—A. There might have been.

Q. You never mentioned this in any other official inquiry, did you, as a suspicious circumstance, as you recall?—A. I had a conversation with my brother about it afterwards several times, and I mentioned the fact to the chairman of the Citizens' Committee. I didn't speak much of it.

Q. Were any other companies formed at that time?—A. I don't remember, Colonel.

Q. The only one you noticed was that one?—A. On the right, because it was near me.

Q. As I understand, you came into that gate (points to main gate); you drove around in front of D Company?—A. I came down that broad road. I can best describe it by walking over there.

Q. I wish you would show us where you went.—A. I came in this gate, turned to the right in front of D Company, turned to the left past the administration building, turned to the left, drove down the front of the officers' quarters, turned in to the right—the hospital road—up to the hospital.

Q. How did you go out; you were a little uncertain about that?—A. I don't remember.

Q. What you thought. You were uncertain about that yesterday.—A. (Indicates that he probably passed out by the road——.) Not that I probably—I don't know.

Q. What's your recollection?—A. I don't remember how we came out, Colonel.

Q. Whereabouts—will you look at the map; which direction do the barracks face? Toward the officers' quarters and the parade?—A. And the parade.

Q. Where was D Company formed? Show us on the map.—A. They were, to the best of my recollection, between their quarters, which is here, and that walk. The steps are right here that lead up to the barracks.

Q. Only one steps on those barracks that you remember?—A. On the front; yes, a long set of steps.

Q. And that's about the center of the building?—A. Yes; about the center of the building.

Q. You are uncertain as to whether the other two companies there were formed or not?—A. We turned this way, and I did not look this way.

Q. But when you went down the officers' line you could naturally have seen them?—A. I don't remember.

Q. There is no outlet to that road, Major, that passes in front of the guardhouse there, marked "A" on the plat, is there?—A. There was, but it was closed by Major Cooke.

Q. It was closed all during the administration of Major Penrose?—A. Yes, sir.

Q. Was there any way for foot passengers to go in and out in that vicinity?—A. There is a kind of a stile or steps somewhere—just let me refresh my memory—there is now a stile there, the back of the laundress' quarters; they used to go back and forth.

Q. What do you mean by back of the laundress' quarters? Show the court what you mean.—A. I think that represents it; it ought to be there; this way (indicates to the west). People used to go through there; I think the wire was cut.

Q. Show us the stile, will you?—A. (Indicates a point in the wire fence midway between the road in front of the guardhouse and the next street to the east of the garrison, a little east of the center.) East of the old gate.

Q. The old gate was where?—A. Right there. (At end of road passing in front of guardhouse.)

Q. There is no entrance, turnstile, or otherwise. there now?—A. No, sir

The court then took a recess until 2 o'clock p. m., at which hour the members of the court, the judge-advocate, the accused, his counsel, and the reporter resumed their seats.

L. E. Appleby was duly sworn as reporter.

The cross-examination of FREDERICK J. COMBE, after the witness had been reminded that he had been sworn, continued by assistant counsel for the accused:

Q. Major Combe [you stated] that you drove into the town of Brownsville on the morning of August 14, 1906, to attend sick call. About what hour of the morning was this?—A. My belief and remembrance, it was about 7 o'clock in the morning.

Q. I understand, then, that as you drove in front of D Company barracks you saw the company out there and that you formed the impression that two officers were there. Is that correct?—A. Yes, sir.

Q. You think you saw Major Penrose there?—A. To the best of my remembrance and belief.

Q. Was Captain Lyon present?—A. I don't remember.

Q. Who was in command of D Company?—A. I don't know.

Q. Do you know what company Captain Lyon had?—A. No, sir.

Q. Did you observe this company in front of D Company barracks for any considerable length of time?—A. No, sir; just driving by.

Q. You stated you saw the company cleaning their rifles. You have since modified that statement that a few men seemed to be cleaning their rifles. Is that correct?—A. Yes, sir.

Q. Did those officers seem to be supervising the cleaning of these rifles?—A. I can't say.

Q. They were present there, were they?—A. Yes, sir.

Q. They seemed to be attending to what was going on?—A. I can not say.

Q. What did they seem to be doing there?—A. They were standing in front of the company, as near as I can remember.

Q. You stated that an unfavorable impression was created in your mind from this fact that had come within your observation. Do you think that impression was partly produced by the fact that you saw officers present there?—A. Not especially.

Q. If no officers had been present there, would you have thought as much of the circumstances?—A. Yes, sir.

Q. For what length of time did you observe this?—A. I was driving fast; a question of a few moments.

Q. Did you have a sufficient opportunity for observation to have formed a necessarily correct conclusion as to what was being done?—A. Please repeat that question.

Q. Did you have a sufficient opportunity for observation to have formed a necessarily correct conclusion as to what was being done?—A. I simply glanced to the right when I was saluting and saw what I have stated.

Q. You have stated a matter of opinion, haven't you?—A. I stated what I saw.

Q. And your opinion was that the men were cleaning their rifles?—A. Yes, sir.

Q. They were certain facts that came within your observation?—A. Yes, sir.

Q. Now, the question is, did you have a sufficient opportunity of observation to have formed a correct conclusion in your mind?—A. I had a sufficient time to see what I said I saw.

Q. If you formed a necessarily correct conclusion as to what was being done, then Major Penrose and that other officer who was present were cognizant of the facts that came within your observation, for that matter, were they not?—A. I didn't understand the question.

Q. If you say that in driving on past that D Company barracks you saw certain facts that led you to a correct conclusion that the men were cleaning their rifles, the two officers who were situated near those men must have had the same opportunity for observation as you did, and they must have been cognizant of these facts that came within your observation, and they must have been responsible for this matter?—A. I don't know about that; they were officers and were there in the discharge of their duty. I simply stated what I saw.

Q. Can you state positively that this was a cleaning of rifles or an inspection?—A. I said that I saw a few men cleaning their guns.

Q. Could you state positively that they were cleaning their guns or the guns were being inspected?—A. I stated they were cleaning their guns.

Q. Are you familiar with the fact that rifles are sometimes inspected by using a rag?—A. No, sir.

Q. Never saw that done for the purpose of a very careful inspec-

tion?—A. I have seen the formation of an inspection and the officer walking along the line and taking a piece from the men, throw open the breech lock, and throw up the piece and look through the barrel.

Q. But in your experience, have you never seen an officer putting a rag through the rifle and inspecting the rag after it comes through?—A. No, sir; I haven't seen that.

Q. Did you see any inspection of rifles of that command that morning?—A. Not that I can remember.

Q. Do you know what officer was in command of B Company at Fort Brown?—A. No, sir.

Q. Or of D Company?—A. No, sir.

Q. What officer did you meet out in Brownsville that night making the patrol of the town with his company?—A. Captain Lyon.

Q. What company was present with him?—A. I don't know.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. You have been acting post surgeon there for a long time, haven't you?—A. No, sir; for a short while.

Q. You were post surgeon there all the time the Twenty-fifth Infantry was there, were you not?—A. Yes, sir.

Q. As a matter of fact, doesn't the company commander send the sick report to you?—A. Yes, sir.

Q. So that you knew, in your official capacity of post surgeon, who the company commanders were, in that way?—A. Yes, sir; in that way.

Q. But you didn't notice that fact with sufficient particularity to fix it in your mind? Is that what you meant to say?—A. Yes, sir.

Q. You say it was about 10 o'clock when you next saw Major Penrose?—A. Between 9 and 10.

Q. And he was in the presence of Mr. Creager?—A. Mr. Creager was sitting in his office to his left.

Q. Was anybody else in the room?—A. I can't say positively.

Q. Wasn't Lieutenant Grier acting adjutant at that time?—A. I don't remember.

Q. Well, was Lieutenant Grier in the room during any of this conversation?—A. I don't remember.

Q. You don't remember it well enough to state whether he was or was not; that is what you mean to convey?—A. Yes, sir; that is what I mean to convey.

Q. How long were you present at that meeting between Mr. Creager and yourself and Major Penrose?—A. Not more than ten or fifteen minutes, as near as I can remember.

Q. Could you give us any of the conversation that took place at that time? First, could you recall anything that Mr. Creager said?—A. I can't, except that they were talking about who did the shooting. I arrived in the room about that time, and when Mr. Creager got through I took these shells out of my pocket and put them on the corner of the major's desk.

Q. Is that all that you remember of the conversation, so far as Mr. Creager is concerned?—A. Yes, sir.

Q. Let's take up that question of the shells and this interview later when you handed out the shells?—A. My remembrance is that I had them on both occasions.

Q. You stated you saw the company cleaning their rifles. You have since modified that statement that a few men seemed to be cleaning their rifles. Is that correct?—A. Yes, sir.

Q. Did those officers seem to be supervising the cleaning of these rifles?—A. I can't say.

Q. They were present there, were they?—A. Yes, sir.

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Q. Let's take up that question of the shells and this interview later when you handed out the shells?—A. My remembrance is that I had them on both occasions.

Q. How many did you have approximately at that time?—A. I can't say; a hand full—possibly six or eight.

Q. And you are not positive that it was at this time that Major Penrose spoke, as you testified to yesterday, that "These were my men," etc.?—A. Yes, sir.

Q. You went back from there to town, did you?—A. Yes, sir.

Q. Did you previously issue a call for the Citizens' Committee?—A. We had talked on the street——

Q. Had you issued a call at all? You stated yesterday, as I recollect, that you issued a call for a meeting of the citizens.—A. The call was issued, if my remembrance serves me right, between 9 and 10 o'clock. I talked with some prominent citizens who stated to me it was advisable to bring the citizens together. I went down town then and took immediate steps to get thinking people together—the better class of citizens together.

Q. I don't understand yet whether you issued a call previous to this time.—A. No; we had talked about it and said it was necessary.

Q. I find that you say, referring to this, "I went back down town and the people were congregating on the streets and talking over the affair, and they spoke of a mass meeting, and I thought it advisable to call the people together." Now then it must have been afterwards that you did this?—A. Yes, sir.

Q. How did you call those people together?—A. We sent out around town—sent word by our officers to the prominent citizens and told them to bring the people together.

Q. By officers, you mean your police force?—A. Yes, sir.

Q. How long did your meeting last—this meeting of the citizens?—A. It didn't last very long; about half an hour or so.

Q. You decided then to go up and wait on Major Penrose?—A. A committee was appointed. The chair was instructed to appoint a committee, and the chair waived the responsibility. I was the chairman. The mayor waived the responsibility and called upon three of the most prominent citizens to come forward and select a committee for that purpose.

Q. And you went with the committee?—A. Yes, sir.

Q. Had no trouble to get in the post?—A. None whatever.

Q. What did you see as you went in the post, with regard to the position of troops?—A. There was a sentry at the main gate—there was more than one man—and he called when we came up to the gate—he called to the corporal of the guard; that is my belief, and I said "I am the mayor of the town and this is the Citizens' Committee," and he allowed us to go through.

Q. As a matter of fact, were there not sentinels stationed all along that wall?—A. I think so.

Q. Was there any officer apparently in charge?—A. I don't remember; but there was an officer always near by.

Q. A commissioned officer, I mean?—A. Yes, sir.

Q. From your experience in the Army, would you say that there was a company on guard or not?—A. No; I wouldn't say that there was a company.

Q. What would you say? How would you describe it?—A. I would describe it as a squad of men.

Q. And they were all near the gate?—A. Near the gate; yes, sir.

There is a big gate, and a small gate to the left, and I saw several colored soldiers there with their pieces in their hands.

Q. Now, was this disposition of the troops changed up to the time the troops went away?—A. There was always a guard there.

Q. That isn't quite the answer. Was it changed in as far as you could determine between this time or the time the Twenty-fifth Infantry troops went away?—A. I will answer your question this way: I went into the post daily, and every time I went in there there were several soldiers about that gate.

Q. And about commissioned officers, did you see a commissioned officer around?—A. Not after a day or two, but there was a commissioned officer quartered or stationed in the sentry room or in the first sergeant's office of Company D.

Q. What could he see from Company D quarters?—A. He could see anybody come in.

Q. He had a good field of view along there?—A. Yes, sir.

Q. Did you understand he was in charge of this guard there?—A. I understood from Major Penrose he would keep an officer there.

Q. And he lived up to that in good faith?—A. He did, to my opinion; yes, sir.

Q. Your committee then went down and met Major Penrose?—A. We went to the administration building and we met Major Penrose.

Q. And who was present besides the committee and Major Penrose at this meeting?—A. I won't say this positively, but I do believe that there were one or two officers.

Q. Do you remember whether Captain Lyon was there?—A. I don't remember, Colonel.

Q. Well, was Lieutenant Grier there?—A. I do not remember. There were officers present. I can't fix it in my mind.

Q. As I understand, they might have been there?—A. Yes, sir.

Q. Who was the first person to speak to Major Penrose—of your committee, I mean?—A. After we were all introduced; that is, those who didn't know Major Penrose——

Q. Who introduced the various people?—A. I did.

Q. Did you introduce them to anybody besides Major Penrose?—A. I believe that I did to some other officers.

Q. Who were the officers there you introduced all the committee to as a preliminary to your meeting?—A. To all of them—all that I knew.

Q. So when you started in you understood that practically everybody knew who everybody else was?—A. Yes, sir.

Q. Who was the first man to really open up the conversation in regard to the happenings of the night before?—A. Mr. Kelly, the chairman of the committee.

Q. I wish you would tell the court everything that you can remember that Mr. Kelly said. Give his conversation, as nearly as you can, as he said it, and the substance of the balance.—A. He briefly stated what I have stated before about the occurrence.

Q. And the events he spoke of were——A. The killing of Frank Natus, the wounding of the lieutenant of the police, the killing of the horse, the shooting of the town generally, his duty, and the belief of the citizens that it was done by some of Major Penrose's command. That is the gist of the conversation.

Q. Before he spoke, you yourself said something about who you were and what you were?—A. I don't remember. Major Penrose knew me.

Q. I know. How many in that committee?—A. The full committee were 15, but they were not all present.

Q. As a matter of fact, didn't you say to Major Penrose what had happened and how you happened to come there?—A. Mr. Kelly did that.

Q. Are you sure you didn't do that, now, Major?—A. I don't remember.

Q. Now, as a matter of fact, didn't you announce the fact that you had had a meeting down town; you had discussed this outrage of the night before, and a committee had been appointed and Mr. Kelly was chairman of that committee? Isn't it a fact you so announced?—A. I don't remember.

Q. You wouldn't say it isn't so?—A. No; I wouldn't say it isn't so.

Q. Did Mr. Kelly say anything about the object of the committee?—A. Yes, sir; he stated that.

Q. What did he say—what did he state to Major Penrose was the object of the committee?—A. That this committee having met—that such and such a thing has happened, as I have already stated, that the Citizens' Committee—that they had appointed an investigating committee to look into this and to find out and to confer with Major Penrose, and to find out, and get his efforts and his best endeavors to find out who did this shooting.

Q. Did he say anything about that it was their intention to lay the facts that were in their possession before Major Penrose? Was anything said to that general effect?—A. I don't remember that, Colonel.

Q. Told him there was no doubt, substantially, that the soldiers had been guilty of that?—A. Mr. Kelly dilated at length on that. I don't remember exactly what he said.

Q. He didn't hold back anything? He told Major Penrose everything you knew and the weight of evidence?—A. Yes, sir.

Q. Then he did lay before him substantially everything as you understood it at that time?—A. Yes, sir.

Q. You told him about the killing of Natus, as you say, and the wounding of the lieutenant?—A. Yes, sir.

Q. Did you discuss any of the events previous to the 13th, or was your conversation limited to that?—A. I don't remember, sir.

Q. You don't remember whether the so-called Evans affair and the so-called Tate affair was brought up at all?—A. It might have been, but I don't remember.

Q. Well, was Major Penrose asked by him or any particular committee at that time anything about his then belief was as to the parties who did that?—A. I think so.

Q. Now, did he state to this committee anything about the effect of the evidence that you laid before him on his men; if so, what did he say?—A. I showed these clips and the major shook his head and said, "Gentlemen, I fear this is very strong evidence," or something to that effect.

Q. Well, do you remember anything that he said in the way of regrets about that?—A. Yes, sir. Major Penrose was very much moved. Every member of the committee noticed it. He said: "Gen-

tlemen, I wouldn't have had this thing occur for anything; I would give my right arm to find out the culprits."

Q. Did he state anything about the length of time or length of service he had in that connection?—A. Yes, sir.

Q. Do you remember what he said in that regard?—A. No, sir. But I remember of him speaking of his service.

Q. Did Captain Kelly, the chairman, or any member of the committee ask Major Penrose what steps he had taken thus far to ascertain who was guilty?—A. I believe that question was asked.

Q. Do you remember who asked it?—A. No, sir; I don't remember; Major Penrose answered, and I don't remember except regarding precautions.

Q. Did you hear anything said by Major Penrose about his having his commissioned officers at work on that at the time trying to secure evidence?—A. Yes, sir; I believe I did.

Q. Did Major Penrose inform your committee then at that first meeting that he had his commissioned officers at work investigating this matter?—A. Now, that you refresh my mind, I believe he did.

Q. Did he say anything about any instructions that had been given to noncommissioned officers by himself or at his instigation?—A. He said he had the noncommissioned officers working on this.

Q. I wish you would tell the court the substance, as near as you can recollect, of the instructions he stated he had given to the noncommissioned officers, and by whom.—A. I can't remember, except that you have refreshed my mind by bringing these matters up.

Q. Now, did Major Penrose at that time say anything about any precautions he had taken—did he tell the committee about that?—A. Yes, sir.

Q. Tell the court as nearly as you can recollect what he said in that connection.—A. He said something about the establishment of cossack posts along the wall.

Q. Did he give you the limit of those cossack posts?—A. If he did, I forgot.

Q. I will ask you if he didn't say that he had these posts standing from the Rio Grande River to the quartermaster's office, or the quartermaster's storehouse, or something to that effect?—A. If he did, I have forgotten.

Q. Did he say anything about having an entire company on guard?—A. Yes, sir.

Q. Did he say that he had an entire company on guard?—A. Yes, sir.

Q. Did he say when he put it on?—A. After the occurrence on the night of the 13th.

Q. Do you know whether or not he continued that guard from that time on?—A. Whether he kept that guard on in that formation I do not know, but there were guards along the wall all the time at night.

Q. Now, did he say anything about having had any affidavits taken or men interviewed up to that time?—A. Not then.

Q. As a matter of fact, didn't he tell you at that time that the affidavit of one Tamayo, the scavenger, and the sentinel who was in the rear of D, that is, toward the river from Brownsville, had been taken by him?—A. I do not remember.

Q. Do you remember about him speaking of that at any time about that time?—A. I do not remember, Colonel.

Q. As a matter of fact, what was the attitude of those citizens in their visit to Major Penrose? By that I wish to find out whether they were apprehensive as to the future, or what was the attitude of the citizens at that time?—A. They were apprehensive.

Q. That is what I understood you to say yesterday, or the substance of what you said; now on this point, did Major Penrose give you any assurances as to your apprehensions or fears?—A. He said that if his men did this, that he felt sure that there would be no recurrence, and that he would station these cossack posts, and would take all the precautions in his power.

Q. He assured the committee then, at that time, that he had already taken the precautions to prevent his men from getting away from the post, and that he would continue to do so, is that what I understand you to convey?—A. Yes, sir.

Q. Can you give it in his exact language?—A. I doubt it very much.

Q. Is that substantially what he said?—A. Yes, sir.

Q. Did he do so?—A. I think that he took measures at once.

Q. They were effective, you testified this morning, the measures he effected?—A. He kept his men in; yes, sir.

Q. Then did he live up to his promises to the committee, up to that time?—A. Yes, sir.

Q. Did, or did not, Major Penrose at that meeting place in the possession of the committee, or offer to place in evidence, what he had in reference to what occurred?—A. I do not remember whether he so stated at that meeting, but he said that to me repeatedly.

Q. Have you an accurate idea as to when he did make such a promise to the committee?—A. I do not remember that it was made to the committee—Major Penrose repeatedly assured me.

Q. You had no doubt that Major Penrose was assisting you as mayor and the committee?—A. Yes, sir.

Q. All in his power to ascertain who the guilty parties were? Do you think that is true or not?—A. I do not know whether I would have acted that way, but I believe he tried to do what was right.

Q. Have you any criticism of his conduct in that regard?—A. No, sir.

Q. Are you prepared to state to this court anything that Major Penrose omitted to do?—A. Well, I take the same stand about that question that I did this morning.

Assistant to the judge-advocate:

If the court please, we will object to that—to call on the witness to state whether he had any criticism to make of Major Penrose. We do not think it is relevant at all, and we do not think it is competent evidence at all, because it calls for this witness to give his opinion. Now, what value would it be before this court for him to tell you that he thought or did not think what Major Penrose ought to have done in the premises. As I understood, I stated this morning that this witness will testify to the facts, and the conclusions will be found by you. I think that this would be bringing matters before this court that would not benefit you at all—it is not evidence.

Counsel for the accused here requested that the reporter read the last question.

The reporter read the question as follows:

Are you prepared to state to this court anything that Major Penrose omitted to do?

Counsel for the accused:

I must freely confess that I do not see where any opinion is called for from the witness. I asked him to state to this court anything that Major Penrose had omitted in connection with discovering the culprits. Now, if there is any question of opinion there I must admit that I am obtuse.

Assistant to the judge-advocate:

If the court please, it is not the question alone—it is to the line of the examination that the answer to this question would lead to. Now, if this witness were directed to answer that question—to state any facts of any thing, or things that the major omitted to do along this line—if he were to state that he omitted to do it, he would be asked "How do you know he omitted to do so?" and it would be calling practically for this witness' opinion along these lines. In other words, the witness would answer to the question "Is there anything that Major Penrose omitted to do?" that he omitted to do so and so, and this would be calling for his opinion, and as his opinion as a military expert.

As I take it, the accused here is charged with having failed to do his duty in certain matters as an officer, and to ask this witness, "Did he omit to do so and so and so?" would be using him in matters military as to the question of the accused's guilt.

The reporter was again called upon to read the previous question.

The court:

What time is this, before or after the 13th?

Counsel for the accused:

It was after the 13th. He stated that Major Penrose offered to cooperate with the committee. He stated that yesterday, and I am simply asking if he omitted to do anything or not.

(Witness continuing.)

I did not understand it that way. The question would elicit an answer from me which would criticise Major Penrose's conduct as an officer.

The court:

I would suggest that you frame that question differently.

Counsel for the accused:

I will withdraw the question.

Q. Did Major Penrose make any offer to cooperate with the committee in discovering the guilty parties that day?—A. Yes, sir.

Q. Was this ever renewed at any time afterwards?—A. I don't know whether it was to the committee; it was to me.

Q. Repeatedly?—A. Yes, sir.

Q. Did he cooperate with the committee?—A. Yes, sir; I think so.

Q. Did he fail to place before the committee in so far as you know, any evidence that he had?—A. I do not know; I was not actively with the committee; I was practically a member of the committee from the fact that I was mayor of the city, and my executive duties and responsibilities kept me continually moving about, so in fact I did very little work with the committee.

Q. You had a great many conversations with Major Penrose about this, didn't you?—A. Yes, sir.

Q. And was he, or was he not, in so far as the conversations were concerned, struggling to find out who these guilty men were?—A. Yes; his assurances were so.

Q. Did you question these assurances?—A. No, sir.

Q. You did not question that Major Penrose in that regard was acting in good faith?—A. No, sir; I did not.

Q. Do you know anything about the suggestion coming from Major Penrose in regard to the appointment of a special committee of three to consider everything that he had, that he would place before them?—A. If he did, I have forgotten.

Q. Somewhere about the 20th of August, didn't he write a letter to the committee, or do you know anything about it?—A. No, sir; my statements before this go to show that I knew little of the work that was done in the committee room.

Q. You don't know, as a matter of fact, he offered to present all the evidence and examine every man before the committee that they wanted?—A. I have heard that, but I do not know anything about his having stated that to the committee. If he did, and I was present at that committee, I did not hear it, and if I did, I have forgotten.

Q. Did you, in the course of this conversation, say anything to Major Penrose about holding or controlling the unruly element of the city of Brownsville?—A. Yes, sir; in one of my conversations I repeatedly said to Major Penrose that I was straining or doing everything in my power to keep everything quiet and keep the peace.

Q. As a matter of fact, wasn't this sentiment uttered by you at that time and voiced by the committee itself? I am talking about this meeting of the committee.—A. I do not remember about the committee, except that I took that stand from the first, that I was going to maintain peace in the town.

Q. But I want your best recollection as to whether or not you did not assure Major Penrose that morning, and that the committee did not support you in it?—A. At this moment I do not remember that I did; I repeatedly said that to Major Penrose.

Q. As a matter of fact, didn't you and your committee and Major Penrose part with most cordial relations that morning?—A. Yes, sir.

Q. You went away from that meeting then perfectly satisfied that Major Penrose would keep his men from entering the city?—A. I was perfectly satisfied that he would do everything in his power.

Q. Now, Major, I want to go back to that Mrs. Evans affair that we dropped this morning. This morning you described simply the one-half of the block between the alley running east and west and the street to the west; you did not describe the upper half of the block.—A. No, sir.

Q. Do you know who was living in the other part of that block?—A. Not by name, but I know the class of people, etc.

Q. Now, I shall have to ask these witnesses some plain questions about the people there and the character of them, and I want plain answers.

The court then took a recess until 3 o'clock p. m., at which hour the members of the court, the judge-advocate, the accused, his counsel, and the reporter resumed their seats.

CROSS-EXAMINATION OF MAYOR COMBE CONTINUED.

BY COUNSEL FOR THE ACCUSED.

Counsel for the accused:

I will state to the court that we have made a rough draft of the block in which Mrs. Evans is supposed to live, and the judge-advocate has consented to the use of this by the court and the witness in explaining what he meant this morning, and we

are perfectly willing that a suitable copy of it be made on an enlarged scale to attach to the record. My object is simply to clear up the matter for the court, and everybody else will understand what the witness is talking about.

Q. Now, you described this morning only the part of that block that is toward the gate of the garrison, did you not?—A. Yes, sir.

Q. Now, as I understood you this morning with reference to that road that runs by the court-house (witness goes to map)—in regard to that road that runs by the court-house and where the old gate is, that is closed up—is that block to the left? Is that property the block where you have your pointer now?—A. This leads into the street, and this block is right here (indicating).

Q. Pretty close to the noncommissioned officers' quarters, as shown on the map?—A. The front faces the other way.

Q. To the rear of those quarters?—A. Yes, sir.

Q. Now, what is the nature of the people who live in that immediate vicinity?—A. To the right of that other half block they are people of questionable virtue.

Q. Is it what you call the Tenderloin district?—A. Yes, sir; you can call it that.

Q. That is what it is generally known as?—A. Yes, sir.

Q. Now, as a matter of fact, don't the people of the Tenderloin district live in that immediate vicinity?—A. To the right—I mean to the right, going out of the gate.

Q. But I mean in the same block; people of that class?—A. On the other half block?

Q. Yes, sir.—A. They were Mexicans.

Q. As a matter of fact, then, that entire district up in there, from there on up, is of this element?—A. No; I would not say the entire district, because there are respectable Mexicans who are good people in there, but there are houses of the nature I have mentioned in that locality.

Q. But a good many Mexican women who are of that character?—A. Yes, sir; on that half block and on the other block. I do not wish to convey that respectable people do not live there.

Q. I did not wish to convey that. What I want to bring out is: In that vicinity are there a large number or small number of these people?—A. Quite a number of them.

Q. You are a doctor there in the city, are you not?—A. Yes, sir.

Q. And as mayor and doctor you would naturally know where those people were, would you?—A. Yes, sir.

Q. Will you describe what this plat is (hands witness plat)?—A. This is the road which runs along the wire fence of the garrison.

Q. And called Fifteenth street in the evidence?—A. Yes, sir. This is the alley running north and south from the garrison fence across the town right along there (indicating on map).

Q. And it is to the east, is it, of the block that you described?—A. It is to the east of the block.

Q. Go ahead with the next street.—A. Then the next street, I believe, is Fourteenth street.

Q. And then the street west of it?—A. Is Adams street; the plat is not correct, because that street, if it is Adams—that road leads to the hospital, and through that gate into town, right down into the street.

Q. Adams street?—A. Yes, sir.

Q. At any rate, that road opens right into a street?—A. Yes, sir; it opens into a street, but I do not think it is Adams street.

Q. Now there are houses on the Fourteenth street side of this place?—A. Yes, sir.

Q. The Leahy residence is to the east?—A. Yes, sir.

Q. And the one to the east is——A. Fairman's upholstery is there.

Q. As I understand you, there are no other buildings on the garrison, as you recall?—A. No, sir.

Counsel for the accused:

I am told that it is not Adams street, and my only purpose is to get that location for the court, and I would be perfectly satisfied to have it put in the record just as it is in fact. I will be very glad to have Mr. Kleiber show us.

Mr. Kleiber (assistant to the judge-advocate):

Yes, sir. It is Jefferson. This Leahy residence is on Fourteenth street, near Jefferson, inside of Fifteenth, near Adams. That map is not correct.

Member of the court:

Major Combe's last answer I would like to have explained. I understand he stated that block began at the road and extended to Fourteenth street.

The witness:

The block extended one square.

Counsel for the accused:

Mr. Kleiber has corrected that. That Fourteenth street there ought to be Fifteenth and that straightens it.

The witness:

I stated that that was wrong.

Member of the court:

At the foot of that mark would be Fifteenth street.

The judge-advocate:

If the court will kindly allow me, I think I can fix it.

Mr. Kleiber:

I can clear this up. If the court please, these streets are 300 feet apart. Now, that is Fourteenth street; that is Fifteenth street along here until it reaches about Washington and goes that way: that is Fifteenth street. Then this would be Sixteenth street. The next street north of Adams street would be Jefferson street. Right there there is a road coming from the post and an iron gate opening out into Jefferson street; that is the corner of Jefferson and Sixteenth. Here is the corner of Jefferson and Fifteenth, and then this block is the Leahy house on Fifteenth street, and the Fairman upholstery is on the corner, if I remember, of Fifteenth and Jefferson. This is the block of which Major Combe is testifying. Is that correct, Major?

The witness:

No, sir; you took the wrong road; that is the road that turns to the garrison wall.

Q. (Mr. Kleiber.) There is a gate right there (indicating on map).—A. No, sir; there is no gate there.

Q. There was a gate there?

The witness:

May it please the court, I can show exactly where the gate is. There is a gate right there. That is the road that goes around the garrison fence. Here is the gate, and there should be a street right here, and that is the street that Mr. Kleiber has reference to.

Q. (Counsel for the accused.) Is it a street or alley?—A. It is a street.

Q. Do you remember what the name of it is?—A. It is Jefferson.

Q. (Member of the court.) I do not understand that little street there?—A. The map is wrong.

Q. I do not understand that little street at the east end of the mark (indicating north and south).—A. That is Fifteenth street.

The president:

If there is no objection, Mr. Kleiber, will you kindly take a pencil and mark off the continuation of Fifteenth street as it should be.

(Mr. Kleiber marks off Fifteenth street, as requested.)

The president:

Now, Doctor, would you kindly take the rule and rule across the map the street that you refer to that is a continuation of that road that goes by the court-house?

(Witness marks off street on map, as directed.)

Member of the court:

I would like to hear Major Combe again describe that north half of that block in the so-called Tenderloin district from that revised map.

The witness:

I can do so, I think, to the satisfaction of the court. Here is the block that we have been discussing up to the alley. The Leahy house is right here. The Fairman upholstery establishment is on this corner, and the stable is right there. The alley runs there, then the rest of the block continues there.

The judge-advocate:

I think the court and counsel understand that we do not want to make any point of this; we do not want to get the mind of the court confused as badly as we are.

Q. (Counsel for the accused.) Now let's take the block or the half block across Jefferson street from Mrs. Evans', isn't it a fact that there a lot—that there is a sort of negro settlement in that block and that a number of them are prostitutes?—A. Which direction?

Q. The block to the west—that is, to the west of Jefferson street or rear toward the gate of the garrison—from Mrs. Evans' block.—A. I think that the colored family that you have reference to is respectable, but there are people of the class that we have spoke of in that block further west, facing the garrison.

Q. As a matter of fact, how far are those houses occupied by this class of women on the west from Mrs. Evans' house?—A. One hundred yards.

Q. Might be less?—A. Hardly less.

Q. Give us an idea with regard to the blocks themselves?—A. The blocks are 120 and 120 and 40 feet; that would make them 280 feet from the corner of one block to the corner of the other.

Q. Is it a full block from Mrs. Evans', or in the next half block?—A. Part of those houses are a half block.

Q. And part of them in the next half block, are they not?—A. Yes, sir.

Q. So that it would not be 280 feet from Mrs. Evans' house to some of them?—A. Not some of them.

Q. It would be less than a half block, as a matter of fact?—A. It would be under a hundred yards.

Q. As I understood you this morning, this man—Mr. Evans—reported to you the facts as stated by his wife?—A. Yes, sir; the following day.

Q. In the afternoon, was it, as near as you can recollect?—A. I had heard it before by—Mr. Evans saw me in the afternoon—I had heard of it in the morning.

Q. It was considerably discussed?—A. Yes, sir.

Q. It created quite a good deal of feeling?—A. Yes, sir.

Q. Did you take the story of anybody besides Mr. Evans?—A. I heard it.

Q. Did you take the story of any other witness besides Mr. Evans?—A. Why, it was related to me, and I expect——

Q. No; I am not talking about street rumor, I am talking about investigating this matter as mayor.—A. No, sir; it was placed in the hands of the chief of police.

Q. Did he make any report about it then or at any subsequent time?—A. Later on.

Q. When?—A. After Mr. Evans came to me.

Q. Was it after your interview with Major Penrose?—A. I think so.

Q. Did you interview Mrs. Evans herself?—A. No, sir.

Q. Do you know whether she was interviewed by anyone?—A. Later on I went to see her, with Major Blocksom.

Q. But not until with Major Blocksom did you interview her?—A. No, sir.

Q. Did you interview this man that is stated to have run out after she screamed?—A. No, sir.

Q. Did you make any effort to locate him?—A. No, sir; that wasn't my business.

Q. You knew there was a good deal of feeling in the town?—A. Yes, sir.

Q. What steps did you take to allay that feeling?—A. I spoke to the people and told them to wait until the thing was investigated; and then Mr. Evans and I went down that afternoon and we saw Major Penrose and began the investigation in that way, and Major Penrose said he would take steps at once to investigate it, and that night this shooting occurred.

Q. But you didn't order any investigation before you went to see Major Penrose?—A. Yes, sir; I stated that I told the chief of police to look into it. There wasn't time to investigate in that time.

Q. There was no officer under you that had investigated it and made a report at the time you visited Major Penrose, and you had seen no witnesses of the occurrence except Mr. Evans when you accompanied him, as mayor, to make the complaint?—A. I had seen the chief of police, as I stated before.

Q. As I understood you, you simply told him to investigate it?—A. When he reported such and such a thing had happened, I told him to take this matter up and investigate it at once, and then Mr. Evans came to see me and we went to see Major Penrose.

Q. But before your chief so reported, and acting on this rumor and what Mr. Evans told you and you went down, you didn't get any other evidence?—A. Except hearsay evidence. I didn't see any witnesses to the act.

Q. I think, in answer to my question, what steps you took to allay the excitement due to this, you stated you told them to wait until the thing was investigated?—A. People met me on the street and addressed me and said, "Mr. Mayor, such and such a thing has happened; this is a terrible occurrence and charge;" and I said,

"Be cool; wait until we investigate this thing and find out the facts," and I went along to investigate.

Q. Is that all you did to allay the feeling?—A. That is it; that is all I can think of except the instructions to the chief of police.

Q. Did you give any instructions to your police or other people to notify them that the matter was being investigated further than what you have said?—A. That is all.

Q. You didn't send around that you had placed this matter in the hands of Major Penrose and it would be investigated?—A. I hadn't seen Major Penrose.

Q. I mean afterwards. What I want to get at is what you did that day as mayor.—A. I was on the street and I met citizens who spoke of this affair and who were excited and said it was a terrible charge, and then I told the chief of police. I had told the chief of police to take the matter up at once and investigate it and report to me; and then in the afternoon I went to see Major Penrose with Mr. Evans.

Q. Had you examined Mrs. Evans?—A. No, sir.

Q. Did you ever examine her personally?—A. No, sir.

Q. You don't know whether she showed any marks of violence about her person or not?—A. No, sir.

Q. You don't know anything about that at all?—A. No, sir.

Q. Who would naturally arrive at that?—A. I do not know.

Q. Now, Major, coming back to the question of what you did to allay the people, did you, either through your officers or yourself, after the interview with Major Penrose, take any steps to assure the people that Major Penrose was investigating?—A. I told the chief of police to be on the qui vive, inasmuch as this thing had occurred and there was a great deal of excitement, and outside of that I took no other measures.

Q. When was it you told him that?—A. That was after I left Major Penrose.

Q. But you didn't take steps to inform the people of the city that Major Penrose had it in hand and would investigate it?—A. No, sir.

Q. All they had was a general statement?—A. I didn't anticipate any trouble and I knew that Major Penrose was on the alert and I didn't anticipate anything of the kind.

Q. Did you know, personally, that Mrs. Evans was injured in any way?—A. No, sir.

Q. Did anybody ever tell you so, aside from Mr. Evans himself?—A. No, sir; except she suffered from the shock.

Q. I say, did anybody ever tell you besides Mr. Evans himself?—A. I do not remember.

Q. What is your best recollection?—A. My best recollection is that I don't remember.

Q. Now, let's go back and commence fresh at the first time you heard this shooting; I want to go over that. You said that the first thing you heard, as I recall it, was four or five pistol shots?—A. Yes, sir.

Q. What you took to be pistol shots?—A. Yes, sir.

Q. Now, don't take us along the street as you did before, but tell us consecutively what you can recall as to the shooting, the nature of the shooting, and when it occurred.—A. I was awakened about 12 o'clock by what I thought to be four or five pistol shots in a southerly

direction from my residence; I almost immediately thought this was followed by irregular rifle firing—I took it to be rifles—and I got up and got down the street as soon as I possibly could, and the firing was still on when I was on the street, and this firing continued for several minutes. It came nearer and then it receded from me. During that firing—that musketry firing—I heard the report of what I took to be a .45-caliber pistol—several pistol shots in addition to that as I was going down the street. I do not know that this was mentioned in my other testimony, but it is a fact, I heard several shots, I heard windows being thrown open and people hollering out, and what I took to be alarm shots—I am sure they were. I heard the report of one automatic pistol—what I took to be an automatic pistol; that was on my way down—mixed up with this other firing. But this firing that I heard from these pistols was in the residence part of town to my right and left.

Q. Well, now, let's get the time, the sequence of this. How long after the four or five pistol shots was it that you heard some other shooting, and what was the nature of that firing?—A. Almost immediately; that was rifle shots.

Q. That was all rifle?—A. Yes, sir.

Q. Anything mixed with that?—A. No, sir.

Q. That was while you were still in the house?—A. Yes, sir.

Q. Now, how long did that last with respect to your movements? A. It lasted—the firing was almost continuously.

Q. Take this first firing up to the time you got dressed and got out?—A. It took me to get out of bed and get my clothes on and get down in the front of the house two or three minutes.

Q. We will say three minutes?—A. Yes, sir.

Q. The nature of all this firing was of musketry firing?—A. Yes, sir.

Q. You heard nothing mixed with it at all?—A. No, sir.

Q. About how many shots would you say?—A. I couldn't say.

Q. Would you attempt to locate that definitely at all?—A. Positively.

Q. And where was it?—A. It was in a southerly direction from my house.

Q. How far from your house would you say it was with respect to the garrison gate, for instance, or any point you want to mention?—A. The garrison gate is a quarter of a mile from my house.

Q. Was this firing nearer to you than the garrison gate?—A. About that distance, I think.

Q. Now, I understood you to say the other day the firing lasted about ten minutes?—A. No, sir; I have never said it lasted ten minutes.

Q. About how long?—A. Several minutes.

Q. Give us your best recollection.—A. I do not think I have ever stated how long the firing lasted.

Q. We have got it up to three minutes, when you were outside your house. What was the next firing you heard after that?—A. I heard firing after that—irregular firing.

Q. For how long; that is, with respect to your movements, not in minutes?—A. There was a little lull in the firing.

Q. Just after you came out?—A. Came out, and a little lull, and then firing again. I can best answer your question by saying in my

opinion the firing must have lasted five or six minutes from the first shot to the last. That is about the best I can say.

Q. When did the firing cease, with respect to your movements?—A. I was down, to the best of my recollection, on the square between Eleventh and Twelfth streets.

Q. On the square between Eleventh and Twelfth streets?—A. On the left-hand side of the street.

Q. It ceased entirely from that time?—A. Yes, sir; I think so.

Q. Did you, in the time you were passing from the point you indicated just outside your house after the firing had been going on three minutes, hear any other shots mixed up with this musketry firing?—A. I heard those pistol shots, that heavy sound which impressed me as coming from a .45 caliber. I was right at my house when I heard that.

Q. Did you hear any others?—A. I heard a pistol, evidently from a small caliber, and one automatic.

Q. And what fixed this automatic firing in your mind?—A. The noise that it makes—that sharp, popping noise.

Q. It wasn't due to the rapidity of the firing?—A. Yes, sir; the rapidity of the firing, also.

Q. You say musketry firing. What do you mean by that?—A. Well, it sounded to me like the sharp whip-like crack, or, if I may use the expression, it sounded like the old Mauser fire, or the Krag-Jörgensen, but I wish to impress the court that it was the Krag-Jörgensen that I heard most.

Q. Can you distinguish at that distance between a Winchester, for instance, and the Krag-Jörgensen?—A. If there were that number of Winchester rifle shots of the high-power caliber I don't know that I could.

Q. So that when you stated musketry fire you didn't intend to limit that to the idea of an army rifle?—A. Not altogether, except that it sounded to me like the old military rifle, the Krag.

Q. Carried you off to the old army days when you had heard that?—A. Yes, sir.

Q. But as I understand you it could not have been done by a high-power Winchester or Savage or any high-power rifle of that character?—A. No high-power rifle of that character.

Q. So then, those shots, as far as they are concerned, created the impression on your mind conclusively as to who was doing the shooting?—A. I thought it did.

Q. I want you to limit yourself to my questions. I want to know whether or not the firing created the impression in your mind as to who was doing the shooting?—A. It impressed me that those shots were made by high-power rifles.

Q. And that is all you will say?—A. Yes, sir.

Q. Where were these pistol shots?—A. It sounded to me as if they came from the residence part of the town, to the right and left and rear of me as I was going down Elizabeth street.

Q. None of them to the east of you?—A. That is to the right of me. I said right and left.

Q. What about this firing that was different from other firing you have had in Brownsville at night that waked you up?—A. I have heard pistol shots at night.

Q. As a matter of fact, isn't it almost a nightly occurrence to have shooting in the town of Brownsville and Matamoros?—A. No, sir; not since I have been there.

Q. Well, I will limit my question. Are you prepared to state to the court that it wasn't a very frequent occurrence, say, from May of last year up to and including August, frequently that you heard firing at night?—A. Not frequently; no, sir.

Q. Well, how often?—A. It is impossible to say.

Q. As a matter of fact, isn't it a very frequent occurrence that the custom-house guards are firing on smugglers? Isn't that a frequent occurrence at night?—A. No, sir. It does happen, but I don't consider it a frequent occurrence.

Q. Is there more or less firing over in the Tenderloin district?—A. No, sir.

Q. It isn't a frequent occurrence—you are sure of that?—A. It isn't a frequent occurrence. It does occur, but it isn't a frequent occurrence.

Q. There might have been other firing mixed up with that that you described?—A. I don't think so, sir.

Q. There is one thing that I want you to clear up in the evidence in this connection; when did you first hear that this man was killed?—A. That night, I do not remember.

Q. Was it before or after you went down to see Major Penrose? I want to be frank about this, Major. You testified before Mr. Purdy that it was before and you testified yesterday that it was after, and I simply want to get the matter straightened.—A. No, they came for me after, but to the best of my remembrance I was told before, and a man came to me on the corner of Miller's Hotel and told me a man was shot down there, but that was not my first knowledge of it. I want to clear it up.

Q. All I want is to get it clear. I don't make any point of it. I want to take up the question of those lights, Major.

(Counsel for the accused asked the court's indulgence a few minutes).

The court then took a recess until 3.55 o'clock p. m., at which hour the members of the court, the judge-advocate, the accused, his counsel, and the reporter resumed their seats.

Q. I want to clear up for the court, Major, the location of the lights, and particularly with reference to the Miller Hotel. I will hand you that picture. Do you identify that as the Miller Hotel, front view?—A. Yes, sir.

Q. And it faces on what street?—A. Elizabeth street.

Q. And the rear of that hotel is where?—A. It is the alley that runs behind the hotel into Thirteenth street.

Q. There is in that picture in the rear of the hotel either a continuation of the building or a 1-story building disconnected, which is it?—A. There is a 2-story building that runs back to the alley.

Q. I will ask you, the part of this building that has three stories, is that all there is of the Miller Hotel?—A. No, sir; there is another building.

Q. Back of it?—A. To the south and runs back to the alley. It is a 2-story building.

Q. No; I mean back there. I am speaking of on the Thirteenth street side.—A. It is all one building, three stories high.

Q. Now, what is that in the rear of the Miller Hotel, considering the rear to refer to the part toward Washington street?—A. There is an alley there and a 1-story building on the corner.

Q. What is that 1-story building?—A. The Bolack store.

Q. Then the alley we have heard so much about is between the 3-story building, known as the Miller Hotel, and the Bolack store?—A. Yes, sir.

Q. Now, in your testimony before Mr. Purdy, as I read it, you were asked this question: "Then where was the next light?—A. The next light was the one in front of the Miller Hotel office, an acetylene light, and one in the court yard of the Miller Hotel; also an acetylene light."—A. Yes, sir; it is an acetylene jet in front of the office; that wasn't lit, but the one in the courtyard was lit and a light in the office. That might convey a wrong impression. I don't think that light was lit; it was the one in the office and the one in the courtyard.

Q. Then the jet you refer to in your evidence before Mr. Purdy as being in front of the office was not lighted that night?—A. I don't remember.

Q. Examining that picture I notice that on Elizabeth street there is an entrance about the middle of the 3-story building?—A. Right here (indicating).

Q. And then just on the corner turning toward Thirteenth street and coming toward Washington there is another door?—A. Yes, sir.

Q. Which is the main entrance to the office?—A. The one that is generally used is the one on Elizabeth street; the smaller one of the two.

Q. Where is the office with respect to these two doors?—A. Those two doors open into the office.

Q. They both open into the office?—A. Yes, sir.

Q. You spoke of the desk; where is the light that you referred to in the office with respect to the desk?—A. I don't know.

Q. Do you remember whether that light was lighted or not?—A. There was a light in the room.

Q. There was a light in the office?—A. Yes, sir.

Q. Was that a lamp?—A. I don't know.

Q. You don't remember whether that was a lamp or what?—A. I don't know whether it was a lamp; I don't remember positively, and my inclination is that it was a lamp.

Q. Do you remember where it sat with respect to the desk? Is your memory accurate enough to tell us that?—A. I don't remember just now.

Q. Well, as I understand it, about the center of this 3-story building is where the acetylene jet is?—A. I don't know whether it was lit or not; there was one jet.

Q. You stated first you thought it wasn't lighted?—A. I don't know.

Q. And just around this corner—near the corner—as shown by that plat, is one of the entrances to the office which is in that shape—perhaps I had better call that Thirteenth street and Elizabeth street?—A. Yes, sir.

Q. Will you come over here just a minute. At this mark "05," is that the courtyard?—A. Yes, sir.

Q. As a matter of fact, aren't those round red circles supposed to be lights?—A. The lights come up from the wall right here inside the courtyard.

Q. That is the jet you spoke of?—A. That is the jet that was lit.

Q. That was light that night—a bright light?—A. Yes, sir.

Q. But that couldn't shine on Thirteenth street?—A. No; but there is a window here and a light in here (indicating).

Q. Well, that was a lamp?—A. I think so.

Q. Was that the only light that could have shown on Thirteenth street? Was this light in that place there shining in through the window or door?—A. This was a very bright acetylene jet. You can see everything was light around there.

Q. I understand that, but what I want to get at is, was that the only light shining on Thirteenth street, except, of course, this corner light here (referring to the light on the corner)?—A. Yes, sir.

Q. Now, you stated in your direct examination, speaking of these lights, you were asked, "How was that front of Miller's Hotel lighted?" and you said, "By an acetylene jet in the courtyard and by a light in the office." That is correct, is it?—A. Yes, sir.

Q. Now, you said in your direct examination, in answer to the question in your narrative testimony, and you were told to go on, and you said you walked under the lamp post and looked up and down Thirteenth street and then walked back across the street to Miller's Hotel, and the front was brilliantly lighted up; that was what light?—A. That was from that acetylene light and from the lamp across the street, and made a bright light across the street, and also the light that came from the office.

Q. There were no lights outside the Miller Hotel building, except the street lights?—A. That is all.

Q. Where did you run into that crowd that night?—A. Which crowd?

Q. The one that you said was angry and excited, that you harangued with or addressed.—A. In front of the Ruby Saloon.

Q. Where is the Ruby Saloon with respect to the Miller Hotel? Will you go up there to the map and show the court?—A. This is the Miller Hotel, and this is the Ruby Saloon (indicating).

The judge-advocate:

Give the number, please.

A. Nos. 8 and 3.

Q. Had you been down to the Miller Hotel at the time you met that crowd, or was that when you first came down?—A. I met that crowd as I came back. They were congregating right along.

Q. But before you went down to Major Penrose you run into a crowd?—A. That is the crowd, because I went down to the Miller Hotel. When I first come in front of the Crixell saloon, and I walked down to Wreford's saloon and looked up and down the street; walked diagonally across to Miller's Hotel and called out if anyone was there. Then I come back down in front of the Ruby Saloon, where I had left my police, and the people were congregating.

Q. How many people were there at that time?—A. Well, in a few minutes there must have been under 200 people.

Q. That is the crowd that you spoke of as being armed?—A. Yes, sir.

Q. And that is the crowd that you referred to when you spoke to Major Penrose in going out of the gate, and told him that he must keep his men in that night; that you had prevented that armed crowd from rushing the post? That is the crowd you referred to?—A. I referred, when I said that to Major Penrose, to all the citizens and the crowd generally.

Q. But when you spoke of the 300 people, that is the crowd you meant?—A. Yes, sir; that is the crowd. I probably spoke in the excitement, and I may have said 300 people.

Q. Did you examine any of their pistols or guns to see if they had been fired?—A. No, sir.

Q. Did you have them examined?—A. No, sir.

Q. You didn't take any precautions as mayor to find out if any of this infuriated crowd of citizens had fired their guns or pistols?—A. No, sir. There were many prominent citizens and worthy citizens there, and I didn't think it necessary.

Q. Were there not some there that were not so worthy and so prominent?—A. I didn't notice especially. It was a general gathering.

Q. But you didn't, yourself, either examine those arms to see if they had been fired, nor did you officially have them examined then or at any time afterwards?—A. No, sir.

Q. Tell us some of the remarks that this collection of eminent and respectable citizens made there; you say they were infuriated? Give the court something of what that class of men stated about, and who they were.—A. I can't specially say except that they were excited—naturally indignant.

Q. I didn't ask what their feelings were. What did they say, Major? That is what I want to get at.—A. They said that the negroes had done this and that they had——

Q. Who said that?—A. Some of the people that were there.

Q. Can you tell us anything that any of the eminent and respectable citizens said there? Let's confine it to that class; I don't want to go into the rabble.—A. They assisted me from the first.

Q. Can you tell me anything anyone said?—A. That it was an outrage.

Q. Who was it?—A. I can't tell you. Imagine yourself in the same position and you wouldn't remember any more than I am remembering.

Q. Yes, sir; and that was six or seven or eight months ago?—A. Yes, sir.

Q. I simply want to find out if you can remember anything any particular citizen said that night?—A. No, sir; except that I addressed them several—several citizens whom I can remember—Mr. Parks, for instance; he is now dead. He was an attorney and he got up and sustained me in my remarks and said that I was right, that they ought to go home. Mr. Ratcliffe, also; Mr. Webb, the district clerk, and the county clerk readily assisted me in getting those people home.

Q. How did Mr. Parks come to his death?—A. He fell from a window.

Q. When was that?—A. I don't remember.

Q. With respect to this date?—A. Within a month after.

Q. Is that the same Parks that defended the soldier? He was a

lawyer, was he not?—A. Yes, sir; but I don't know about defending the soldier—what soldier?

Q. A soldier by the name of Baker.—A. I didn't know that.

Q. Was Judge Welch there that night?—A. Judge Welch or Judge Wells?

Q. Welch.—A. No, sir; he wasn't there.

Q. Did all those people go right home?—A. They went away in groups.

Q. None of them there when you came back; I mean from your visit to Major Penrose—I am talking about eminent and respectable people, not the rabble?—A. I do not remember any being there except the police and a few special officers—citizens that I told to go get their guns and come and remain with me.

Q. When did you tell them that?—A. Before I went down to the post.

Q. Before you went down with Captain Lyon you selected a number of citizens and told them to wait there?—A. Yes, sir.

Q. About how many?—A. I think there were about 8—under 10.

Q. Now, are you quite positive in your recollection that there were only those men and the police when you came back?—A. I don't remember seeing any more.

Q. There might have been some others?—A. There might have been some others. If there were they were reputable citizens who were allowed to stay there.

Q. How about the hoity-toity?—A. They got off the street, and I saw that they did.

Q. When?—A. I gave my instructions to the chief of police.

Q. When?—A. Before I went down, and he proceeded to execute them.

Q. There wasn't any more firing at all that night?—A. No, sir; none at all.

Q. Lets take up this question of your meeting Captain Lyon. He was at the front of his company?—A. Yes, sir.

Q. How was the company formed at that time?—A. My impression was that they were marching in column of fours.

Q. You won't be positive about that?—A. Not specially; no, sir.

Q. Whereabouts, with respect to the front of the company, was it that this disturbance occurred that you spoke of that he had to speak twice?—A. Near the rear of the column.

Q. How many men stepped out of the ranks there?—A. Not more than four, I don't think; maybe less.

Q. Now, you stated that those men were surly; he had to order them back twice. I wish you would tell the court what they did to indicate surliness?—A. Captain Lyon said "Fall back," as near as I can remember or something of that kind.

Q. Said what?—A. "Get into ranks;" "Fall back into ranks."

Q. Is that all?—A. Then I think he said "Damn you, get back into ranks." I don't think he said it more than twice.

Q. Did the men do so?—A. Yes, sir.

Q. What did the men say?—A. "Captain, these men have guns," or "this man has a gun."

Q. Now, did the captain reply to that at all?—A. I was the first one to take it up, and the captain come behind me and I don't remember what he said; he ran down the flank of the company.

Q. Now, as a matter of fact, these men did reply when he told them to get into ranks "Captain, this man has got a gun?"—A. Said it before he started to run back.

Q. What reply did they make? I understood you to say that when the captain said "Get back in ranks," the men said "This man has a gun."—A. They had said it before when they walked out of ranks. I think they made that remark before the captain said anything at all, "Captain, this man has a gun," or "These men have guns," I don't remember which. I don't remember Captain Lyon saying anything until he got down there.

Q. You told Captain Lyon this man was one of your officers?—A. Yes, sir.

Q. And he told them that, and they then let him go?—A. Yes, sir.

Q. But, as a matter of fact, didn't they have that man surrounded?—A. No, sir.

Q. You are sure about that, now?—A. I don't think so; he was standing on the edge of the sidewalk, and the company marched down the middle of the street.

Q. As a matter of fact, now, I would like your best recollection about that, because we want to know. As a matter of fact, hadn't these men that stepped out of ranks pinched and surrounded him so as to prevent him from doing anything with his gun?—A. I don't think they had.

Q. Then that might have been the case?—A. I saw the whole length of the company from them.

Q. Was there anything else that indicated surliness on their part?—A. No, sir.

Q. You never spoke of their being surly before to anybody, officially?—A. I don't know that I have officially, but I have spoken of it.

Q. But it doesn't appear in your testimony?—A. No, sir; that was elicited from me in questions yesterday.

Q. But I want to get at just what these men did or said that indicated surliness?—A. I have already said.

Q. Was it from what you said, and there was nothing else to indicate to you that they were surly?—A. That is all.

Q. You couldn't see their expressions at all?—A. No, sir.

Q. And aside from the fact that he had to repeat his order for them to get into ranks, there was no surliness?—A. That is all.

Q. Now, lets go back to the question of these shells. I wish you would tell the court just where shells were found?—A. As far as I am concerned, I can tell. I found some shells in the alley.

Q. Right there at the Miller Hotel?—A. Right in front of Fred Starck's house.

Q. Did you yourself the next day find any in Thirteenth street outside of those you found at the alley?—A. At the mouth of the alley on Thirteenth street, I did that morning.

Q. But you didn't find any to the northeast—that street that runs northeast and southwest, Thirteenth street?—A. Yes, sir.

Q. Now, did you find any to the northeast on Thirteenth street or to the southwest?—A. The only shells I found were by the corner of the Miller Hotel and the alley, outside the alley, and in front of Fred Starck's house.

Q. Do you know officially of any others being found there?—A. As mayor of the city, some more were turned into me.

Q. I mean on Thirteenth street?—A. I didn't see anybody.

Q. You examined that locality pretty carefully the next morning around the Miller Hotel?—A. Yes, sir; but they had all been picked up.

Q. None had been reported to you or you didn't know of any being found in Thirteenth street, either northeast or southwest of the alley there?—A. I wasn't told where they were picked up.

Q. And you personally know nothing of it by any official reports to you?—A. Except hearsay.

Q. Were any shells of any kind turned in to you except those that you testified to having notch for clips?—A. That is the only kind of shells.

Q. How do you account for this .45-caliber pistol shot and the Mauser shots that you have referred to?—A. Probably shooting from houses.

Q. You don't know from where they were shot?—A. No, sir; only from the windows being thrown up. They were not in that part of town; only one kind of shots came from there.

Q. You don't know where any other shooting did occur?—A. I only know the shells that were turned in to me.

Q. There was no shell evidence of any other kind of shooting?—A. No, sir.

Q. Coming back to that company, you testified that your brother, Dr. Joe Combe, helped this company?—A. No, sir; Captain Lyon told me so and so did Dr. Combe.

Q. You didn't testify to that as your own knowledge?—A. No, sir; except hearsay.

Q. Major, did you, yourself, see any soldiers that night aside from those that escorted you in the garrison and those you said you saw inside the garrison?—A. No, sir.

Q. Now, you went back and you examined the wounds in this man Frank Natus, did you?—A. Yes, sir.

Q. You are familiar with gunshot wounds?—A. Yes, sir.

Q. You have had five years' experience and have seen quite a lot of it?—A. My service was mostly executive, but I saw some.

Q. Considerable gunshot wounds?—A. Yes, sir; I saw some.

Q. I wish you would tell the court what the effect of these high-power jacketed cartridges is on the different objects? First, you may take up the person.—A. I don't know much about high-power rifles, as far as the effect is concerned. I know that the explosive zone is within 500 yards and up to 1,200 or 1,500 yards is called the human. I am giving you just what I know about that. After that the bullet begins to tumble and its tearing effect is very great.

Q. Now, what is the effect of a steel-jacketed bullet on the human flesh in the zone from 100 to 500 yards?—A. It is explosive when it strikes bone.

Q. I didn't ask about bone. Let's confine ourselves to the question. What is the effect on human flesh?—A. My experience is that it makes a clear-cut wound.

Q And as I understood you the other day in testifying about this one wound in Natus, you stated that there was no perceptible differ-

ence to the layman's eye between the exit and the entrance.—A. Yes, sir; I did.

Q. And I also understood you to say that the orifice of exit was practically the same size?—A. Yes, sir; in this case.

Q. You are not really positive in your own mind whether it went in the left side and came out the right or the reverse—it is your judgment?—A. It is my judgment.

Q. You wouldn't swear positively it went in on either side?—A. No, sir; I wouldn't.

Q. So that so far as the flesh is concerned, within the range we are taking—about from 100 to 500 yards—there is a clean-cut hole?—A. There may be pulpifying on the inside, but as far as the orifices are concerned, they are the same size.

Q. Was there any pulpification in this man?—A. There was no post-mortem held; but from the fact that he died very suddenly, there must have been.

Q. If there was no post-mortem, how do you know the man died from the effect of a gunshot wound?—A. Because the evidence was there; he died and had these two wounds, and there was nothing else to say.

Q. Do you mean to say that because a man had a wound that it is ipso facto that he died from that wound?—A. I am telling you what I saw.

Q. Is it or is it not a fact that if you go up and find a man dead with a gunshot wound in him, are you going to swear that that killed him by simply looking at the orifice and the exit?—A. I came to the conclusion from the wound on the body.

Q. Is that your practice in post-mortems?—A. No, sir; there was no post-mortem ordered.

Q. As a matter of fact, might not a man have had those wounds and died from heart disease, so far as your examination established?—A. No; not in this case.

Q. What is there about it that makes you so certain, if there was no post-mortem?—A. Because he was a vigorous man and a young man.

Q. Have you never seen a vigorous young man have heart disease?—A. Not a vigorous young man.

Q. Have you never seen a man apparently vigorous that had heart disease?—A. Yes, sir.

Q. Do you know of your own knowledge, from the examination of Mr. Natus, that he didn't have heart disease?

The witness:

May it please the court and counsel for the accused, I am stating to the court what I actually saw, and if I am here to give expert testimony I should like to be informed by the court. This is going into the expert realm.

Counsel for the accused:

I think we have a right to know why this witness came to his conclusion that this man died from the effect of that wound. He so swore before this court yesterday, and he went further and he said to ordinary man and to some physicians inexperienced that they probably could not determine between the size of the orifice of entrance and the orifice of exit. His entire testimony, his record, not only as a physician but as a soldier, stamps him, and he was practically introduced as such, and he did testify positively that this man died from the effect of that wound, and we are going to insist on knowing how he arrived at the conclusion how he died.

The Judge-Advocate:

I, too, would like to know if Doctor Combe is to be employed as an expert witness, because to so employ him I would have to secure authority to pay him fees as such.

Counsel for the accused:

The question of fees is entirely in the domain of the judge-advocate and the court, but the question of a witness coming here and swearing that a man was shot and died as the result of a gunshot wound, we have the right to go into every particular of it. It isn't a question of expert testimony; we didn't hire this witness; we are cross-examining this witness on questions he testified to in his direct examination.

The President:

Has the judge-advocate any objection to the question that has been asked?

The Judge-Advocate:

I have made no objection; the witness made the objection.

The President:

The question will be answered then.

A. I would like to refresh my memory.

Q. You stated, I believe, although it was not recorded, that you are the family physician of this man Frank Natus?—A. Yes, sir.

Q. Did you give a certificate to the coroner as to the cause of his death?—A. My certificate is here and simply states that the said Frank Natus died almost instantly from the effects of said wounds on about 12 o'clock at night of August 13, A. D. 1906.

Q. That is the certificate you gave to the coroner?—A. Yes, sir.

Q. Didn't you testify that you were called to that coroner's inquest, in the direct examination?—A. The justice of the peace; yes, sir.

Q. That was as you came back from visiting Major Penrose?—A. Yes, sir.

Q. And it was at that time that you examined this man?—A. Yes, sir.

Q. And if I recollect right you testified as to finding two wounds?—A. Yes, sir; right through the body.

Q. Where were the two wounds?—A. I believe one orifice was about between the seventh and eighth ribs and the other a little lower on the other side.

Q. In your certificate you stated there were two bullet holes inflicted by the same projectile—then there were not two wounds, really?—A No, sir; there were two wounds.

Q. Well, you certified that this man came to his death as a result of that; now, I ask you, as his family physician, did you ever examine to see if he had heart disease?—A. No, sir; I treated him at various times, but I never examined for that.

Q. You don't know, as a matter of fact, whether he had heart disease?—A. No, sir.

Q. What was there besides examining the outside of these two orifices that enabled you to swear that he died from the effect of that wound at that particular time?—A. None whatever, except I saw the evidences of the wound effected by a high-power rifle, and it was my opinion he died from the effect of it.

Q. But you don't know; he may have died from heart disease?—A. There is a possibility.

Q. You didn't make any examination to see whether any of the flesh was pulpified?—A. No, sir.

Q. Was there any evidence of it?—A. No, sir.

Q. Now, when you said that flesh pulpifies when struck by a bullet, tell us under what conditions—what circumstances—within this range that you spoke of, where would you look for this pulpification?—A. In just such a one as that; in the soft parts. If it should strike the liver or any of the organs, the spleen, the bullet, in its course will do that. It has great velocity.

Q. It would not make a clean puncture through the liver or the spleen at that range?—A. I don't think it would.

Q. Have you ever seen such a bullet hole?—A. Yes, sir.

Q. Have you ever seen it where it didn't?—A. No, sir.

Q. Then you always look for the pulpifying process in the liver and the spleen?—A. Yes, sir.

Q. How about the flesh?—A. If it is external, it makes a clean cut; one just the size of the bullet.

Q. Then, in the outer skin and the flesh right outside the bone it would make a clean-cut hole?—A. You should look for eversion or turning out.

Q. What do you mean by an eversion?—A. Where the bullet goes in, going through the flesh, there will be a slight inversion.

Q. Turning in of the flesh?—A. Turning in with the force of the bullet where it goes through the body, and where it comes out there should be a slight eversion, and I will state that I didn't notice this in this case. Both bullet wounds were about the same size, and the reason I have said it was probable the man was shot from the right, it is a matter of opinion, because I thought the other one was a larger wound.

Q. Let's see if I get your meaning clear. A shot of that kind going through the muscular part of the leg, for instance, you would not look for pulpifying of the flesh there, just through the fleshy part?—A. It would tear through the surface of the body.

Q. In what way? I am talking about within this range of 500 yards.—A. If it hits the fleshy part of the body, my experience has proven, as it has been, is that it will make a clean cut wound in the flesh. If it strikes a bone it will shatter.

Q. Tell us just what you mean by the effect on the bone, as far as you can judge.—A. It tears the bone, breaks it all up, shatters the bone at that place.

Q. But a bullet going straight through the leg striking the bone—I mean going directly through from one side to the other, transversely, would you expect to find any pulpifying of the flesh?—A. Yes, sir; because the bone that goes before the bullet would tear the tissues up.

Q. Does that take out large pieces of the bone ordinarily?—A. Oh, it shatters the bone considerably.

Q. About what size piece of bone would it take through?—A. That is impossible for me to say.

Q. Can't you give the court some sort of an idea of that?—A. No further than what I have said.

Q. Let's take up this lieutenant of police. You testified in your examination before Mr. Purdy, as I recollect, that you went down

with your brother to help dress his wound that night?—A. As I said yesterday, I went in there and examined it hurriedly; I made my statement yesterday.

Q. Did you see it after that at all?—A. I saw the wound after the amputation; saw the stump.

Q. Were you present at the operation?—A. No, sir; I couldn't be.

Q. I wish you would tell the court just how that struck this man, and where—indicate, won't you?—A. Well, a part of it would be hearsay.

Q. Well, you saw the wounds?—A. I saw the wound with a gauze bandage over it, and helped put more of it on, and through this thin gauze bandage I could see the pieces of the bone sticking out, or the phalanges dropping over, and his hand was pretty well torn.

Q. Where was the orifice of entrance?—A. I could tell that it was higher up.

Q. You don't know anything about as to where the bullets struck that man?—A. Except as I saw his hand that night.

Q. You don't know, as a matter of fact, what direction it came from?—A. No, sir; I couldn't tell anything about that except that his hand was shattered.

Q. Is his brother going to testify here?—A. No, sir.

The Judge-Advocate:

He hasn't been summoned.

Counsel for the accused:

Has anybody been summoned by the prosecution at all that can tell us as to that?

The Judge-Advocate:

Not that I know of.

Q. Well, you stated you saw the stump of the hand; was there anything in that to indicate the direction from which the bullet came?—A. Oh, no; the arm was amputated.

Q. How far up from the wrist was it amputated?—A. I don't remember; well up the arm.

The Judge-Advocate:

Up the arm. I take it that you mean the forearm?

A. The forearm; yes, sir.

CHAS. E. HAY, Jr.,
Captain and Judge-Advocate, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., February 14, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocates. The accused, his counsels, and the reporter were also present.

The reading of previous day's proceedings was dispensed with.

The cross-examination of Mayor COMBE continued, after he was duly cautioned that he was still under oath.

Q. I want to ask a few questions more about this certificate you gave. Do you know of your own knowledge that this man Frank

Natus died almost instantly from the effects of that gunshot wound?—A. It was my opinion from the nature of the wound inflicted.

Q. And did you know he died about 12 o'clock—from your own knowledge?—A. Not of my own knowledge.

Q. But you don't know whether the man actually died from that wound or from other causes?—A. It was my opinion——

Q. I asked you, Do you know it? You said yesterday he might have died from heart disease.—A. I said there was a possibility.

Q. Might this wound have been inflicted by any high-power pistol bullet?—A. I doubt it; I think a high-power rifle wound.

Q. Will you swear that it could not have been so inflicted?—A. No, sir; I will not swear it.

Q. Did you examine the wound on the arm of the lieutenant of police with sufficient accuracy—you said at one point in your testimony you saw this wound—did you examine it with sufficient accuracy to state, to predicate a statement, as to how that was inflicted; with what class of bullet, I mean?—A. Yes, sir; it is my opinion that it was inflicted with a high-power projectile.

Q. Might it have been inflicted with a pistol of high power?—A. Yes, sir.

Q. You are not prepared to swear that it was necessarily a steel-jacketed bullet that inflicted that wound on the policeman?—A. No, sir.

Q. With regard to the wounds on that horse. Did you see those? A. I saw the ones on the upper side of the horse; in other words, the horse was lying down, and I saw the wounds on one side.

Q. Did you examine them to determine the character?—A. Just looked at them casually.

Q. You are not prepared to state what caused these wounds—that is, with particularity?—A. It is my opinion that they were inflicted with a high-power weapon.

Q. State why.—A. Because the wounds on one side of the horse exposed to view were small.

Q. But you did not examine the entrance and exit so as to determine positively?—A. I could not. The horse was very heavy, and I was not doing that at the time.

Q. Then you predicate that solely——A. On what I supposed to be the orifice of entrance.

Q. You don't know that it was the orifice of entrance?—A. I thought it was.

Q. But do you know it?—A. No, sir.

Q. You saw simply what was exposed?—A. I saw several bullet wounds on one side of the horse.

Q. Tell us where they were.—A. I can't say where they were.

Q. How many?—A. I saw three.

Q. And you can't state where they were?—A. No, sir; they were on the body of the horse.

Q. Might two of these have been made by one bullet?—A. No, sir.

Q. You don't think so?—A. I don't think so.

Q. Now, when you were going down street toward the shooting that night, you said you saw a man coming toward you on a run.—A. Yes, sir.

Q. And he turned out to be a man by the name of Genaro?—A. Yes, sir.

Q. Did he speak to you in English or Spanish?—A. My remembrance is that he spoke to me in Spanish.

Q. Are you clear in that, or is it just a——A. I am not clear in it.

Q. As a matter of fact, don't you usually converse with the police force of the city in Spanish?—A. Yes, sir.

Q. They were practically all Mexicans?—A. Yes, sir.

Q. Now, it was about this place that you heard those bullets whizzing?—A. No, sir.

Q. Where was it when you heard the bullets whizzing—before or after you met this man?—A. Before.

Q. I wish you would tell us how you determine the direction of a bullet by the whiz.—A. I can't say, except that I heard the bullets whizzing, and I supposed it—thought it, to come from—it was my opinion that it came from the direction from which I had heard firing.

Q. And had you not at that time heard promiscuous firing to the right, the left of you, and in front of you?—A. None in front of me, except that of the .45 caliber pistol which I heard during the firing.

Q. Might these bullets have been any of those?—A. I don't think so.

Q. You want to give the impression to this court that those bullets were coming straight down Elizabeth street from the gate?—A. No, sir; I said they were high in air, and seemed to me to be coming from the south; in my direction, seemed to me.

Q. It is very important to this case, and I want to know, so that this court may know, what direction you fix in your mind—either fixed then or afterwards—that those bullets came from?—A. It was my opinion they came from the south.

Q. Directly down Elizabeth street, or from the right or left of Elizabeth street, as you went toward the Government gate?—A. I can't say.

Q. But you said they came down the street and your brother said to hug the wall.—A. He said, "They are firing down the street."

Q. And you formed your impression from what he said, or the sound of the bullets?—A. The sound of the bullets, the whiz as they came over, approaching me.

Q. It is true you said they were high in the air?—A. Yes, sir.

Q. But you also said in the south, and you left the impression on my mind from your evidence—I don't pretend to say the impression of the court—but that you thought, from what you said and your brother said about hearing the bullets, that they came down Elizabeth street. Did they or did they not, from your best judgment?—A. I simply heard the sound, and it came from a southerly direction.

Q. It might have been from the other side?—A. It might have been a little to the left of Elizabeth street, and it might have been a little to the right. I can't say.

Q. But what is your opinion now. Do you think they were coming straight down the street?—A. I don't know.

Q. You won't testify on that point at all?—A. No, sir.

Q. Now, Major, you are not really familiar with the new Springfield rifle, are you, or you were not at that time?—A. No, sir; I am not, even now.

Q. You testified, however, before Mr. Purdy on that point, did you not?—A. I don't remember, sir; if you will refresh my mind.

Q. I will look it up in a moment. Before going into that tell this court how this evidence was taken by Mr. Purdy; was it taken down by shorthand, a stenographer, and then transcribed and submitted to you and you signed it and swore to it?—A. I believe so; yes, sir.

Q. It was taken down and submitted to you and you signed it and swore to it?—A. Yes, sir.

Q. You don't pretend to say from your own knowledge that any of those shells were fired from the new army Springfield rifle?—A. Except that in when I took those shells that I picked up myself to men that do know, they said they were unquestionably shells used by the Springfield rifle.

Q. Your testimony I have just found (reading): "The empty shells and ball cartridges that were picked up in the streets of Brownsville on the morning of the 14th of August and turned over to you by the sheriff of this county were fired from what kind of a rifle, if you know?—A. The modern Springfield rifle."—I want to know, Major, if, in giving that testimony, you were speaking from your own knowledge, or if you were speaking from hearsay of other people?—A. From hearsay—experts. I consider Major Penrose and officers expert, who said that the shells that I exposed were the same shells used by the Springfield rifle.

Q. But he didn't tell you they had been fired from a Springfield rifle. You didn't have Major Penrose to support that statement?—A. No, but simply that the shells were like it.

Q. So you are not authorized to quote Major Penrose as stating that those identical shells were fired from a Springfield rifle?—A. I don't mean to convey that impression. Simply that those shells were the same as used in the Springfield rifle.

Q. As a matter of fact, do you know to-day where those shells were manufactured or who manufactured them?—A. No, sir; I do not.

Q. Now, Major, in your direct evidence you testified that a member of the committee that visited Major Penrose in his office that morning asked him if he had inspected the pieces of his men immediately after the occurrence of the night before. You replied to that, "You mean the arms?" and then you went on to say "Yes, sir." Or if he had depended upon the report of a noncommissioned officer as to the condition of these rifles. Major Penrose answered that he himself had not inspected the pieces, that he had depended upon the report of a noncommissioned officer for the moment.—A. That's my remembrance of the conversation.

Q. Now, Major, I am going to ask you if, in your five years' experience, you believe that was a natural reply for an officer to report that he had depended upon the report of noncommissioned officers when he had commissioned officers there?

To this question assistant judge-advocate objected as follows:

We object because it is thoroughly incompetent. It calls for an opinion of the witness. Let this witness state the facts, as we said yesterday, and let this court draw the conclusion from these facts. That is our objection. It is incompetent because it calls for an opinion of the witness. You might as well ask him the general question and be done with it: Do you think Major Penrose is guilty under either of the specifications before this court? He testifies as to the facts, and this court draws its own conclusions from those facts.

By the counsel:

I think we have a right to know whether this witness' recollection is accurate or not accurate as to a statement he makes. He has had five years' experience serving directly where troops are; he is introduced as such—the very first thing they did was to lay that sort of a foundation—and I am trying to get at whether this witness, after that length of experience, really believes that that was said as a noncommissioned officer or a commissioned officer. That's what I want to bring out. It is not the witness' opinion at all; but it is, would that be a natural, logical answer for a man to make under those conditions. Now, this witness don't have to be an expert and receive expert pay to know what is the common everyday practice in the service; it is not a question of opinion—it is the question, is that the practice, is that a natural, logical, sensible thing to have occurred under these conditions, and I want this court to know whether this witness, who has had five years' experience, really, in his own mind believes that that is the natural, logical answer for a major in the service, with three companies and officers under his command, to have made to him at that time. I did not introduce him as an expert with five years' experience; the prosecution themselves put him in that light, and I think we have a right to know and you have a right to know. The fact is that that thing as it stands now, as you will readily perceive, creates in your mind, and must create in your mind, certainly a very peculiar condition of mind of this accused before you, that with commissioned officers commanding companies, some ten or twelve hours after this thing has occurred, at 10 o'clock the next morning, would say he had depended upon the reports of noncommissioned officers. I want to know if that is a natural or logical thing, and I want to know, and I repeat it, that this witness, after five years in the Army, should know if that was a natural, logical, or sensible thing to say, and we insist on knowing.

By the assistant judge-advocate:

The gentleman "is hoist on his own petard." He has admitted that he calls for this witness' opinion, and when he makes that admission he gives his own case away. We simply ask that this question be repeated to the court, and you will see at once that it calls for a conclusion of the witness. He admits that he wants to get at what is in the mind of this witness; that is, what he thinks about it. You don't want what this witness thinks about any fact of this case; all that you want of this witness, as with any other witness, is the fact or facts that he saw, and what he heard said in his presence. You draw your own conclusions; you form your own opinion as to what effect, or the meaning of these acts or these words are. As well take the witness throughout the record of this case, and in each and every instance wherein he details a conversation, or a remark rather, made by Major Penrose, stop there and say, "Well, what do you think Major Penrose meant? When you and Mr. Evans went to him and repeated this outrage, or alleged outrage, upon Mrs. Evans, and Major Penrose admitted it was an outrage, do you think he was sincere when he expressed that opinion?" As well ask him that, and so on throughout the record of this case. As I take it in this instance, the counsel for the accused wishes the opinion of Major Combe as to whether or not in his, Major Combe's opinion, Major Penrose acted properly when he took the report of the noncommissioned officer on that night. As well ask him for his opinion in any other regard, as to any other fact—and I will ask that the stenographer read this question to which we have made this objection, and I will rest my case on that. I want it clear in the court's mind as to what that question is.

(Question objected to, page 485 [235], was read to the court.)

By the counsel:

That is formulated and intended, may it please the court, not as the distinguished counsel says, to find out whether Major Penrose acted wisely—we don't admit that he acted at all in the matter—we asked and we intended to ask simply this: Does this witness wish this court to understand, after a five years' experience in the Army, that that is the custom or the logical, natural thing for Major Penrose to have done, to have said he received the report of the noncommissioned officer instead of the report of commissioned officers whom he had in command of the companies, and we insist on the question.

The accused, his counsels, the witness, the reporter, and the judge-advocates, then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce the decision that the objection be sustained and the question not be answered.

Q. Are you sure he said noncommissioned officer, and not commissioned officer?—A. Yes, sir; to the best of my belief and remembrance.

Q. And this was at what interview?—A. The interview where the committee went down to confer with Major Penrose.

Q. At about 11 o'clock in the morning?—A. Or a little after.

Q. Now, at this same interview, I want you to repeat just exactly, as near as you can recall it, the language Major Penrose used about his men in connection with that shooting. I want his exact words, as near as you can recall them.—A. Major Penrose stated, as near as I can remember, that from what was stated to him by the committee and from the evidence of these shells, that it looked as if some of his men had committed this act, but how they did it he could not understand. That's the gist.

Q. Oh, one little point in connection with that. You said the statements made before that committee were not made under oath; that is, in their examinations.—A. They were not.

Q. And you don't mean to imply, or have the court imply, that the people went up and made loose and random statements?—A. No, sir.

Q. The committee was endeavoring in every way, and you believe the witnesses were trying to tell the truth?—A. I do.

Q. I don't know what purpose the prosecution had, but I want to clear up why you stated they were not under oath. Now, Major, I want to clear up the conversation you had with Major Penrose about his men. They came there on the 28th—on the 28th of July last?—A. Yes, sir; 1906.

Q. And did they have a pay day in between that?—A. They had a pay day on the 11th day of August.

Q. Now, from the time they came there on the 28th of July up to the 13th of August, were any of his men arrested and brought before your police authorities?—A. I don't remember the dates. There were two or three men arrested, but I can not fix the dates in my mind.

Q. Are you certain that—do you know what they were arrested for?—A. Being drunk and disorderly, I think.

Q. As a matter of fact, Major Combe, was there but one arrested?—A. There were two who were brought before me, and one, I think, was taken to jail and was not taken before me. The last I am not certain.

Q. Were these men drunk that were arrested and brought before you?—A. I think that was the charge—drunk and disorderly.

Q. But do you want to state positively that they were?—A. I don't remember.

Q. Do you know what was done with them?—A. They were taken to jail.

Q. Those two that came before you?—A. Yes, sir; and they were brought before me next morning. One of them was a man who was clerk in the administration building. I don't remember the other.

Q. We know that that man was arrested. Information of that particular man who was a clerk in the adjutant's office you communicated to the commanding officer, did you not, about him?—A. I don't remember; I think so.

Q. Well, won't your records show these others?—A. Yes, sir.

Q. The records will show all the men that were arrested?—A. Yes,

sir; if any man is arrested and put in jail there is a record. Comes before——

Q. Have you or have you not a record of three men arrested during that time?—A. I don't remember. I can only remember that these two men came before me one morning.

Q. Do you remember having sentenced more than the one?—A. No, sir; I don't remember. I remember of one case where the soldier was drunk and disorderly, and the chief of police himself sent him to the barracks; did not put him in jail at all; sent him to the barracks. That was about pay day.

Q. Now, did you have conversation with Major Penrose about the behavior of his men generally any time from the 28th of July on to the 13th?—A. Yes, sir.

Q. What did you say in regard to the general behavior of that command—its behavior in the town?—A. A few days after the battalion arrived in Brownsville I called on Major Penrose, and the subject was brought up about his men, and he asked me as to their behavior, and I said that I had known of nothing against them. I may have used the expression that I was pleased with the men. That was before these occurrences.

Q. Now, as a matter of fact, didn't you have a conversation with him on or about the night of the 12th of August, the day after pay day, in which you commented on the good behavior of these troops as compared to other troops who had been there?—A. I can not think of the date; but I think it was after even the 13th that I had that conversation regarding their behavior on pay day.

Q. What did you say? Tell the court, in substance, in regard to their behavior in comparison with other troops.—A. Major Penrose asked me how his men had behaved in town on pay day, and I said, as far as I knew, their conduct was as good as that of the white troops that had been there before them.

Q. Didn't you say, in substance, it was better?—A. I don't remember that.

Q. Didn't you say in the presence of some one else, in fact, in Major Penrose's house, during a comparison of the behavior of the different troops, that it had been much better than the white troops, in so far as the city was concerned?—A. I don't remember that.

Q. Will you say you did not say that?—A. No, sir; I won't say that.

Q. Then you might have said that?—A. Yes, sir. I should like to state that that had reference to the conduct of the men on pay day.

Q. Yes; I intended it to so refer. Now, you said in your evidence before Mr. Purdy, speaking of this trouble: "Q. Did you have any reason to anticipate the trouble that occurred on the night of the 13th of August?—A. No, sir. It was a complete surprise to me. I had told Major Penrose that I had served with many colored troops; that I had always found them obedient and well disciplined, and that I did not anticipate any trouble. I said that to Major Penrose more than once." As a matter of fact, in your experience in serving with these troops, are they not, as a rule, more quiet and obedient during pay day than white troops, less drunkenness, etc.?—A. It has been my experience that colored troops when commanded by white officers are as well disciplined and their conduct is as good as white troops.

Q. And this battalion that was there at your place was no exception, aside from the incident of the 13th?—A. There were several things—before I answer the question direct, I will say there were several occurrences that my attention was not called to until after the 13th, which would not prompt me in answering in the affirmative.

Q. Tell us what those were.—A. For instance, we have in our city an old veteran of the civil war, Mr. Goodrich, and he stated that on one or two occasions, as he was coming home, he was jostled off the sidewalk, a thing which had never occurred in his experience while colored troops had been stationed in Brownsville. Mr. Dennett, who lives one square from the garrison wall——

Q. (By president of court.) When you said jostled off the sidewalk, did you mean to imply the white troops did it?—A. (By witness.) I meant the colored troops.

A. Mr. Dennett, who lives one square from the garrison wall, also stated that the men, in passing backwards and forwards in front of his house, disturbed his family by using profane language and being disorderly. And I have already stated what Mr. Evans said about the conduct of the men around his house.

Q. That all you can recall?—A. That's all I can recall, except the altercations or differences which some of the citizens had with the troops.

Q. These were not brought to your attention before the 13th, I understand?—A. No, sir.

Q. I understood you to say it was after?—A. Yes, sir.

Q. Was this at some of these indignation meetings that were held in the city, when the people were outraged and indignant, or before?—A. I don't think it was in the meeting.

Q. Are you positive of it?—A. Upon second thought I am positive about it.

Q. But was it during that period when the people were so terribly incensed and inflamed against the colored troops for these outrages?—A. Yes; when this came to my ear.

Q. It was while the people were in an outraged and inflamed state of mind that they remembered these small incidents, was it?—A. It was brought to my attention about that time.

Q. Had not been spoken of to you before that time?—A. To me? No, sir.

Q. Never reported to you as mayor or anything of that sort?—A. No, sir.

Q. You don't know of any such things being brought to the attention of the officers?—A. No, sir; because when I stated this to Major Penrose he said, "Major, I wish I had known this before."

Q. What are you referring to now?—A. To these incidents I have just narrated.

Q. When and where did you relate these to Major Penrose?—A. At his quarters.

Q. When?—A. I don't remember the date, but it was after the 13th.

Q. Give us your best recollection. We want to know close enough, Major, so that we can rebut it.—A. After the 13th.

Q. Whereabouts?—A. At his quarters.

Q. Anybody present?—A. I don't remember.

Q. What did he say in reply?—A. What I have just said.

Q. What?—A. "Major, I wish I had known this before."

Q. You don't consider it an unusual thing for soldiers to swear on the streets, do you?

To this question the judge-advocate objected as follows:

We object, may it please the court. That calls for an opinion of the witness.

By the counsel:

I ask it as a fact.

By the judge-advocate:

I differ with you. I state to the court it calls for an opinion of this witness whether it is usual or unusual.

By the counsel:

I will change the question.

Q. Is it or is it not a usual thing to hear soldiers swear on the streets, even of Brownsville, white or black?—A. No, sir.

Q. Is it a usual thing for even citizens to swear on the streets of Brownsville?—A. In a loud voice, no, sir.

Q. Then the people of Brownsville are very much better in that regard than other communities?—A. I don't know, sir.

Q. You testified in your examination before Mr. Purdy that you were familiar with and knew all the arms that were owned by the citizens of Brownsville. Is that true?—A. More or less—that I knew the kind of weapons.

Q. You don't pretend to tell this court——A. I don't know what every man in the city had; I don't know that at all.

Q. That's the impression I drew from your evidence.—A. It should be corrected. No man could say that.

Q. Then, in so far as that statement of yours, that you were familiar with what every citizen owned in the way of firearms—it is erroneous, is it?—A. The impression is erroneous. I know, more or less, the class of arms that are used in the city by citizens of Brownsville, and can so state to the court or to yourself.

Q. When did you acquire this knowledge?—A. I have been living there all my life; I am fond of hunting; I know all the prominent citizens; I know the men who go hunting, and in that way I have acquired my knowledge.

Q. Is it a general knowledge or specific?—A. Yes; it is general.

Q. As a matter of fact, there might be a dozen Manlicher rifles owned down there and you not know it?—A. No, sir.

Q. You are sure of that?—A. Yes, sir.

Q. You have been in every house in Brownsville?—A. I have been in almost every house in Brownsville in my professional or in a social character.

Q. Do you make it a point to examine all these houses for firearms?—A. No, sir.

Q. Now, Major, you stated in your examination by Mr. Purdy that you examined certain cartridges that were found by Captain Macklin when you went to bid good-by to him.—A. Will you please refresh my mind?

Q. You were asked as to a conversation you had with any officers, and then it says (reading), "Who was that officer?—A. Captain

Macklin. Q. You may state briefly what that conversation was.—A. I was at Captain Macklin's quarters one night shortly before his departure from Brownsville, to say good-by to him, and he stated to me he had quite a number of these shells and clips in his possession, which he showed me and which were the same I picked up. He stated to me he had found them just outside the garrison gate, which opens on Elizabeth street, the morning after the raid."—A. Yes, sir.

Q. Did you compare those with those you had found?—A. No, sir; I was standing at a distance of several feet from Captain Macklin when he produced these shells and held some of them in his hand.

Q. Then the general resemblance——A. It was the general resemblance simply that prompted me to make that statement.

Q. Then your statement was not based on your personal knowledge or upon comparison at all?—A. No, sir.

Q. You stated positively, as I have just read, that he found them just outside the garrison gate, on Elizabeth street.—A. Yes, sir.

Q. Is that true?—A. That's his statement to me.

Q. You are sure of that?—A. As sure as I can be.

Q. You wish that to be your sworn evidence now?—A. To the best of my belief and remembrance that was stated to me by Captain Macklin.

Q. Could he not have stated to you that he did not find them there, but he found them further up the alley, Fifteenth street?—A. No, sir.

Q. Are you positive that he did not state that he found them only in the alley that comes in between Elizabeth street and Washington street?—A. He never mentioned the alley.

Q. Look at that picture (handing witness photograph already in evidence as Exhibit —). Where does that alley come in with respect to that small outhouse used by B Company?—A. Here is the main gate. That alley that you have reference to is to the right of that gate as you go out of the post.

Q. Yes; but with respect to that outhouse of B Company, where does it come in with respect to that?—A. Have you reference to one of those two houses?

Q. Yes.—A. There are two of them.

Q. Do you know what they are used for?—A. Yes, sir; one is a woodhouse and the other is a rear.

Q. Now, the one not used as a woodhouse, but the other one used for B Company——A. I would not attempt to say. I have to take my landmarks from that gate, if you will permit me. It is 120 feet from the corner of the telegraph office to the corner of the alley.

Q. I will ask you to look at that plat, and you will see indicated in pencil near the outlet of the alley that outhouse of B Company.—A. This is the gate, here is the telegraph office, here is that alley (indicating on map).

Q. Now where is the outhouse with respect to that?—A. I won't say positively with respect to that. As to the outhouses—there are two outhouses in the rear of B Company quarters; whether they are located as that is I can not positively say.

Q. Is that approximately correct?—A. I think so.

Q. Now, as a matter of fact, isn't that the distance between Elizabeth street and the alley in the shortest line—that is, perpendicular, not diagonal? Isn't it 120 feet on the perpendicular?—A. Yes, sir; this is a little more, because it is a slanting line.

Q. Now, you are positive that Captain Macklin didn't say to you that he found them only in the alley in the rear of B Company's private house there?—A. I never heard him mention that.

Q. Where was this conversation?—A. In Captain Macklin's quarters.

Q. Now you said you were familiar with the sentiment of the people of Brownsville toward the soldiers, in your direct testimony, and you so testified to Mr. Purdy. In substance you said to Mr. Purdy—you told Mr. Purdy what instructions you had given to the chief of police and you repeated the same evidence here, substantially.—A. Yes, sir.

Q. Now in what way did you become familiar with the feeling of the people of Brownsville toward the troops?—A. I live in the town.

Q. Had it come to you officially, or not?—A. I live there—in contact with the people.

Q. Now let's find out. You have a good many white citizens in Brownsville?—A. Yes.

Q. Quite a number of Mexicans?—A. A great many.

Q. And you had a few colored people; had a few there all the time, did you not?—A. Very few.

Q. How many, dozen or more?—A. I should not think that the number would exceed two dozen.

Q. And of that two or three dozen there would be perhaps a dozen who were male negroes?—A. Yes, sir.

Q. And they had been there for some time?—A. Yes, sir; right along.

Q. What was the general sentiment of the people toward soldiers generally?—A. Soldiers generally? Good.

Q. Do you remember ever visiting the commanding officer of the post there, before the Twenty-fifth Infantry arrived, in connection with certain incidents about a press meeting—meeting of the press association down there?—A. Yes, sir.

Q. You were on that committee were you not? Either ex-officio or otherwise?—A. In one way or the other.

Q. There were quite a number on that committee?—A. Yes, sir.

Q. As a matter of fact was it not brought to your attention, as a member of that committee, that soldiers had been excluded from a meeting in the park?—A. Yes, sir.

Q. And didn't you visit the commanding officer in connection with that?—A. Yes, sir.

Q. And for what purpose?—A. There was a placard posted in the entrance of the park by some one which read: "Soldiers and dogs not allowed at this meeting. By order of the mayor."

Q. "Press please take notice?"—A. I don't remember that.

Q. Was that notice in the possession of the commanding officer when you visited him?—A. I don't know whether it was then. It was shown to him by a committee who went to see him and investigate the matter.

Q. That was how drawn up; how prepared, tell the court.—A. It was written in ink——

Q. Wasn't it written with a marking piece?—A. No, sir; it was evidently done with a piece of wood—this is my opinion—softened and dipped in ink and written on this paper—a piece of white pine.

Q. As a matter of fact, had this matter been complained of to the commanding officer—by the soldiers, I mean—that the soldiers were excluded from that meeting, made the subject of an official complaint by soldiers?—A. Yes, sir.

Q. And the Twenty-sixth Infantry was stationed there?—A. Yes, sir.

Q. And Major Roberts was the commanding officer?—A. Yes, sir.

Q. Is it or is it not a fact that a member of your committee did give instructions that soldiers and Mexicans were not to be admitted that night? As a matter of fact, didn't you and your associate or associates that day practically apologize to Major Roberts for the soldiers being excluded that night by the police at the entrance?—A. We went to see Major Roberts, if my memory serves me, because it had been stated that some member or somebody in town had put this placard up, and we felt sure that it was done by no civilian and went to Major Roberts to investigate this matter and get to the bottom of it.

Q. But is it not a fact that your policemen stationed at the gate that night refused admittance to soldiers?—A. Yes, sir.

Q. And did it not develop that that act was done under instructions from a member of your committee?—A. I do not remember that.

Q. Will you say it was not a fact?—A. No, sir; I will not.

Q. As a matter of fact, didn't you and your associates apologize to Major Roberts, as commanding officer, for excluding these soldiers that night?—A. No, sir; and I wish to state what we did do, so that the court may understand.

Q. Didn't you substantially make an apology for that?—A. No, sir.

Q. Isn't it a fact that soldiers were excluded and Mexicans were not excluded by the police that night?—A. I do not remember that.

Q. Was that not brought out at that time?—A. It was an invitation affair, and the men were not excluded as soldiers——

Q. You will be given a chance to explain it. I want to know if you are prepared to state that it is or is not a fact that soldiers were excluded from that meeting under instructions from a member of your committee in charge?—A. I believe that to be a fact.

Q. And Mexicans were not excluded?—A. I don't know. If any did get in they ought not to have gotten in past the policeman; he did not do his duty.

Q. Now, there were certain barroom incidents you referred to.—A. Colonel, I desire to interrupt you, because I do not wish to be misunderstood by the court relative to the matter you have brought forth, and it may leave an erroneous impression relative to the feeling of the people of Brownsville. The Press Association visited Brownsville and people were invited—the citizens were invited—to attend this meeting, and to extend courtesies to the association. During that evening two soldiers who were disorderly came to the gate and were refused admittance. Shortly afterwards a policeman on duty caught one of them with a placard in his hand, either taking it down or attaching it to a flambeau which was on one side of the entrance to this park, which was brought to me; I have already stated

what was written on that. Next morning when I found out about it I was very indignant; my name was attached to it, and everyone knows my feelings toward soldiers. The citizens generally were indignant, because Brownsville is a garrison town. We have always been kindly disposed toward soldiers. We were indignant, and a committee was formed and we went to see Major Roberts who was in command of the post. We were sorry the incident had occurred, and we went there to investigate it and get at the bottom of it. We felt sure that no citizen in the town had done this act. We felt it was a matter of revenge or spite because these men were not allowed into the inclosure. (President of the court here asked: "These particular men you mean?" Witness answered: "Yes, sir.") And during the course of conversation—I wish the counsel for accused to especially take notice of this—there was an officer present who said in his experience and service he remembered two such incidents that happened where this very expression was used. Once at Tampa, Fla., and another time at San Francisco, and before we left that committee room I feel that the commanding officer—I am not sure he so expressed himself, but I think he did—that he did not think that the people of Brownsville had put that placard in front of that gate. I say this simply to show the feeling of the people toward the troops.

Q. We don't dispute your personal feeling in the matter; we don't claim that you know anything about it, but we want to show the court just what happened that night.—A. But I don't wish the court or soldiers generally to be under the impression that citizens did that—and the evidence was strongly the other way.

Q. Now, as a matter of fact, are you prepared to state to this court that only these two drunken soldiers were excluded by your policemen?—A. No, sir; I think one man, a very excellent man, was excluded and told soldiers were not allowed.

Q. As a matter of fact, was he not a noncommissioned officer, and did not a very reputable noncommissioned officer make complaint of this—that soldiers were excluded and Mexicans were not excluded?—A. I don't remember that; but I do remember a hospital corps man was refused admittance on the same ground, very politely, and told soldiers were not allowed.

Q. You won't say that the committee expressed regret that this had been ordered by a member of the committee?—A. I believe they did; but I took exception to your saying apologizing, which we did not do.

Q. Explanation and apology are sometimes synonymous.—A. Not always.

Q. I did not mean to say you got down and abjectly apologized. I did mean to say you went there and attempted to explain it, and expressed regret that a member of your committee in charge of this had given orders to your policemen that soldiers were not to be admitted, and the police excluded them.—A. We did not go there to explain it, Colonel, we went there to investigate it.

Q. Now, Major, how many barrooms did you have in your city?—A. I don't know, sir.

Q. Well, more or less?—A. Well, I will count them. Well, at least eight; possibly more.

Q. How many of these barrooms provided extra places at the back door for colored soldiers?—A. Not at the back door.

Q. Well, prepared separate places so as to separate them from the sheep?—A. The one on Elizabeth street, one on the market, one other on the market where they could drink—I don't know whether a separate saloon, but they went there—and one in the lower part of town that was for the colored troops, and one Mexican saloon, I believe, where they went if they wanted.

Q. Did or did not these various saloons that prepared the bar to separate the sheep from the goats stick up signs indicating that?—A. I beg your pardon.

Q. Well, call it what you will. The citizens of Brownsville from the colored soldiers wearing the United States uniform?—A. Yes, sir.

Q. They stuck up notices that those soldiers of the Twenty-fifth Infantry would go around to the back door to the bar?—A. I don't know about the notices, but it was understood, and they were informed.

Q. That matter was generally discussed and was of general knowledge?—A. I believe so.

Q. Is it not a fact that those same saloons that went to all this trouble to separate the negro with the soldier's uniform on from the people of Brownsville did actually sell to Mexicans and the inhabitant negroes of Brownsville drinks at the same bar?—A. Mexicans, yes. Negroes, I can't say.

Q. Will you say they did not?—A. No, sir; because I never saw them.

Q. You never heard of negro inhabitants of Brownsville being excluded from the public bars of that place until the negro with Uncle Sam's uniform came there, did you?—A. I can't remember the subject ever being brought up.

Q. No; it never was discussed. But it was discussed when you heard they were coming?—A. Not until they got there.

Q. It was before they came there?—A. I don't remember.

Q. Preparations must have been made?—A. I don't know; I am not a frequenter.

Q. Now, Major, did you hear from anybody at any time before the colored troops of the Twenty-fifth Infantry, to-wit, B, C, and D Companies, came there discussions among the people about how unfortunate you were to get colored troops there?—A. No, sir.

Q. You didn't hear it personally?—A. I never did.

Q. You won't say that was not generally discussed among the people?—A. I won't say; I don't know.

Q. Then you don't know what the general sentiment of the people was?—A. Prior to the arrival?

Q. Yes.—A. No. As I said to Major Penrose, I had always been favorably impressed with the conduct of the colored troops.

Q. I know you are personally, Major; we know you are fair-minded in that regard, as well as many others, but we want to know, and I want to show by you yourself that you were not familiar with what the people generally thought.—A. You are speaking of prior to their arrival?

Q. Yes. So that if there was discussion and animus shown—regret expressed among the people of Brownsville to the station of the troops there—it didn't come to your knowledge?—A. It didn't come to my knowledge.

Q. It might have been discussed and you not know it?—A. Yes, sir; it might have been discussed.

Q. So, as a matter of fact, Major Combe, you don't know?—A. I don't know prior to the 13th. Troops had been stationed there before and the old residents probably never thought of it—colored troops.

Q. You said somewhere in your evidence before Mr. Purdy that there was no protest whatever of the citizens of Brownsville against the stationing of colored troops there.—A. Officially. If it is not official in the record, it should be.

Q. Major Combe, do you know anything about whether the Congressmen of this State made a protest against the stationing of colored troops there?—A. I don't.

Q. You don't know whether this was brought to their attention by people of Brownsville or not?—A. No, sir; I do not.

Q. When you said that, what did you mean to say?—A. Will you refresh my mind by reading?

Q. Yes; I will. Now, on June 4, 1906, the Secretary of War addressed a letter to the Hon. C. A. Culberson, Senator from this State, acknowledging receipt of a note of June 1 of a letter from Mr. Sam P. Wreford, of Brownsville, Tex., stating certain objections to the stationing of negro troops at Fort Brown. Now, Mr. Sam P. Wreford was a resident of Brownsville, wasn't he?—A. Yes, sir.

Q. And you didn't know anything about it at all?—A. Latterly I knew of the trouble, but at the time I made that statement I knew nothing of it.

Q. So there were some things going on in Brownsville you didn't know about?—A. Yes, sir; it might occur anywhere.

Q. Yes; that's true. So you can understand there is no snap judgment in this matter. You stated in reply to this question, "Now, Major Combe, I will ask you whether you know of any protests or objections being made by any of the city or county officers of this county to the bringing of colored troops to Fort Brown?—A. No, sir; I know of no such protests." Who was this Mr. Wreford, anyway?—A. I think he is a commission merchant.

Q. Lawyer?—A. I don't know whether he is a lawyer or not.

Q. Doesn't hold any office in the city?—A. No, sir.

Q. Or county?—A. No, sir.

Q. So you didn't have that in mind when you answered that question?—A. I knew nothing about it.

Q. Oh, do you know anything about the investigation that was made of this affair at all, officially?—A. Of which?

Q. I mean of this 13th of August. Aside from the committee of which you were a member, do you know anything about the judicial investigation that was made?—A. Judge Welch came there from Corpus Christi at the request of the district attorney, Mr. Kleiber, to take up the matter of investigation of the occurrence of the 13th of August.

Q. Do you or do you not know that this was brought before and was judicially examined by the grand jury sitting at Brownsville?—A. It was so said.

Q. Do you know, or don't you know, that practically all of the prostitutes in the section of the city near there were arrested and held as witnesses in connection with that?—A. No, sir.

Q. You don't know anything about it?—A. I know one or two women were held; I don't know anything about their character.

Q. Do you know whether a great number were arrested?—A. No, sir; I don't think a great number were.

Q. Will you state how many were?—A. To the best of my remembrance there were two.

Q. You won't say there wasn't quite a number arrested?—A. I won't say that. I don't think there were.

Q. How about the colored people there? Weren't a number of them arrested at that time and in that connection?—A. Only two I know of.

Q. Who were they?—A. A man by the name of Max Hamilton and a discharged soldier, Alison.

Q. Now, in talking to Mr. Purdy, you gave your evidence to him; you were asked: "After this raid occurred on the night of the 13th of August, did you form and entertain in your own mind any well-defined idea or opinion as to the causes which brought about that disturbance?—A. Yes, sir. Q. Will you state them briefly?—A. These soldiers had altercations with different citizens. First the attempted outrage on Mrs. Evans, and the refusal of the barkeepers to serve to the troops at the same bar with the white men, although I wish to say in this connection that the bartenders were very considerate and not at all rash." Tell us what you mean?—A. That they were not rough with the soldiers, so I have been told by bartenders.

Q. That was hearsay evidence?—A. No.

Q. You don't know personally anything about it?—A. Simply that the barkeepers said it would hurt their business and would drive their white trade away and that they told the men quietly they could not serve drinks to them.

Q. You don't know whether they told them quietly or roughly—you don't know anything about it?—A. I don't know anything about it.

Q. So, as far as that statement is concerned, it is hearsay?—A. Yes, sir.

Q. You are not a frequenter of bars. You don't know anything about it?—A. No, sir.

Q. "They spoke to the officers; told them their reasons; said it would ruin their business; and they put up separate bars for these men." (Read from book.) As I say, you don't know whether they did or not?—A. That's hearsay.

Q. Then there was the Tate affair. (Quote:) "There were two enlisted men, two colored soldiers, walking up the street, and met a party of ladies coming from the opposite direction. These men, instead of taking the outside of the pavement or the vacant lot on one side, roughly brushed through the ladies, jostling them almost off the sidewalk. Mr. Tate, who was walking in the rear of these ladies with his wife, knocked one off the sidewalk for this ungentlemanly act, and the other one ran away." Now, that's your testimony. Did you personally interview anybody in connection with this?—A. I was told by citizens of this occurrence.

Q. Did you interview any witness, men who saw it?—A. Mr. Tate had a short conversation with me on the subject.

Q. Did anybody else who was a witness of the event tell you the story?—A. No, sir.

Q. Do you know whether or not those men jostled those ladies or whether they walked off the sidewalk? Do you know? That's the question.—A. I was not present; I was not an eyewitness.

Q. In order that the court may understand it, I want to clear up a point. How wide is the sidewalk at that place where this is alleged to have occurred?—A. The sidewalks on Elizabeth street—I will have to answer you in this way—are 10 feet wide, but right there I think it may be about 8.

Q. Show us on the map, as near as you can where you understood it occurred, so the court will understand where it occurred.—A. It is not on the map.

Q. You don't know where?—A. I know where I was told it was.

Q. Whereabouts?—A. Up Elizabeth street, in front of Captain Dalzell's residence. I was told it occurred there.

Q. Major, was or was not there a fence at that place, between the sidewalk and the residence?—A. There is not.

Q. What kind of sidewalk is in front of that house—about how far is it from the sidewalk to the house?—A. The place I have reference to is a vacant lot.

Q. I wish you would tell the court, as near as you can, what the sidewalk was composed of, about how wide it was, how high above the street, and whether there was grass between that and the house, etc., give us an idea, so we will know just exactly what the conditions were.—A. The sidewalk is made of brick, and the width is about 8 feet. There is a slight fall to the gutter.

Q. About how much?—A. Oh, under a foot; I can't tell you in inches.

Q. Go on and tell what intervenes between that and the house.—A. The place I have reference to had no house.

Q. Were they or not constructing some building in there at that time?—A. Yes, sir; a church.

Q. Was there any fence?—A. No, sir.

Q. I mean between the sidewalk itself and the——A. No, sir; not to the best of my recollection.

Q. As a matter of fact, is it easy enough to step off the sidewalk over toward the house—that is, was the soil practically level there—the ground?—A. I don't remember; they were building there.

Q. About how far was it from the post-office?—A. From the post-office it is just two squares.

Q. Which was toward or from the post?—A. From the post.

Q. This was in the second block above the post-office?—A. Yes, sir.

Q. Do you know whether or not these two soldiers who were walking along there actually stepped off the sidewalk in single file to the right, or whether they actually jostled those ladies?—A. I have stated that I was told what occurred; I was not an eyewitness.

Q. Then when you stated this to Mr. Purdy you didn't know whether your statement of the affair was correct or not?—A. I was not an eyewitness.

Q. Then that statement of yours was based on hearsay and was not a fair statement to go out to the public as the actual facts that occurred?—A. On my belief of what Mr. Tate said to me I made that statement.

Q. Do you remember whether there was any bricks and lumber in that yard or not?—A. No, sir.

Q. Could the men have stepped off the sidewalk toward the right, do you remember?—A. To the left, you mean?

Q. Toward the house, I mean. Could they have stepped off the sidewalk away from the street? That's what I want to get at.—A. I think so.

REDIRECT EXAMINATION.

QUESTIONS BY THE ASSISTANT JUDGE-ADVOCATE.

Q. Doctor, you say you lived in Brownsville all your life, practically?—A. Yes.

Q. How many colored people—that is, male adults—were there living in Brownsville about that time—civilians—more or less?—A. I answered two or three dozen, but I had reference to the colored people.

Q. I thought so, and I am asking you this question: How many adult male colored civilians were living in Brownsville on or about the 13th of August, more or less? If you know, state. I don't mean population, and I don't want floating population; I mean that lived there.—A. At a rough estimate, I would say six or eight men.

Q. Are you not personally acquainted with every colored adult civilian of Brownsville that have lived there?—A. The old residents?

Q. That are living there, with one or two possible exceptions—as a rule, I mean, are you not acquainted with all of them?—A. As a rule, yes.

Q. Did you ever know of any ill feeling between these colored citizens of Brownsville and the white people?—A. No, sir.

Q. Have you ever known of an instance, within your recollection, of a colored man being charged with crime—that is, a colored civilian of Brownsville? Any one of these men you know? In other words, did you ever know of one of them being up before the courts, as we put it, to the best of your recollection, is all I want?—A. Only one.

Q. Was that one a resident of Brownsville, or wasn't he a transient—if I may term it that?—A. He is a resident now.

Q. But at that time?—A. He was a resident. He was before the recorder, not for a crime, but for a trivial offense.

Q. That's the only incident you know of?—A. That's all I can think of.

Q. What has been the general feeling between the white and the colored people in the town of Brownsville? Good or bad, friendly or unfriendly?—A. Good. Very friendly.

Q. How long have you known Lieutenant of Police M. Y. Dominguez, who testified in this case—the man who lost his right arm?—A. As far back as I can remember.

Q. Well, how old are you? What's your age?—A. I will be 40 next month.

Q. And you have known Mr. Dominguez as far back as you can remember?—A. Well, I will say I have known him thirty years.

Q. Has he always held office there in Brownsville?—A. He has been a peace officer and a Federal officer in one capacity or another for many, many years—over twenty-five years.

Q. Do you know what different offices he has held?

By counsel for accused:

I would like to know what purpose is being served by this? It is certainly not direct examination—has no bearing on the case. The man has already testified to his record, and it is taking up time.

By the assistant judge-advocate:

I will be perfectly frank. I will state the object. The counsel stated the other day, in cross-examination of Dominguez, that his cross-examination—if the court will remember—that his cross-examination was a very vigorous examination, and he was very frank with the court to state that his object was to break down the testimony of Dominguez by showing he was not a credible witness, and I propose to qualify Doctor Combe as a witness to Dominguez' character, his credibility, veracity, and truth.

By the counsel for accused:

This is not the time nor place for such purpose. Until we have attacked it directly, it is not the time; and we object, as that is not proper direct examination. We will let it all go in in the proper way.

By the assistant judge-advocate:

It was only to save time.

By the counsel:

We have nothing but time to spend, now, and do not care to save it in this way.

By the assistant judge-advocate:

I will state to the court that counsel stated that he wanted to save time. We want to save time also. He stated that he proposed to attack Dominguez' character. He did attack it as far as he could while Dominguez was on the stand, and we purpose to qualify Doctor Combe, first, to show the length of time he has known Dominguez, the different positions that Dominguez has occupied and filled, show that the Doctor knows Dominguez' reputation in the community for truth and veracity, and, second, that he knows him as a peaceful, law-abiding man. That's my object in starting that examination. I thought we would save time, may it please the court, as long as the witness is on the stand, and not have to recall him.

By the counsel:

This is neither the time nor place, in any practice I am familiar with, and I therefore offer my objection.

By the assistant judge-advocate:

I will be frank with the court. I thought I could get through with Doctor Combe and would not have to recall him. This is a matter with yourselves as I understand it. While it is true in ordinary practice that we can recall this witness, as Doctor Combe wants to get away as well as myself, and there is no use keeping him here for two or three weeks waiting, I thought we would finish with him now. Counsel admits this matter is coming up, and you yourselves have been witnesses to that fact that he proposes to—he has already started to impeach Dominguez as a witness, and we now ask for a ruling.

The accused, his counsels, the reporter, the witness, and the judge-advocates then withdrew and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed to announce the decision of the court that the objection be sustained.

The court then took a recess until 2 o'clock p. m., at which hour the members of the court, the judge-advocates, the accused, his counsel, and the reporter resumed their seats.

Mayor COMBE, after having been reminded that he was still under oath, continued under the redirect examination by the assistant to the judge-advocate.

Q. You stated on the cross-examination, Doctor Combe, that you named three or four citizens, who were to select this committee, the committee that afterwards conferred with Major Penrose?—A. Yes, sir.

Q. Can you name those men?—A. Mr. William Kelly, Mr. James A. Brown, Mr. William Ratcliffe, and I do not remember whether I stated three or four in the examination, but there was a fourth, Mr. Goodrich.

Q. Which Goodrich?—A. The elder, E. H. Goodrich.

Q. Who is William Kelly, in Brownsville?—A. He is president of the First National Bank.

Q. Do you know whether or not he is a Union veteran of the civil war?—A. Yes, sir.

Q. Who is James A. Brown?—A. He is a very large land owner and president of the city council.

Q. That is, he is called mayor protem in your absence?—A. Yes, sir. And he is a director in the First National Bank.

Q. Who is William Ratcliffe?—A. He is the president of the Brownsville Land and Irrigation Company.

Q. And manager of the company as well?—A. Yes, sir.

Q. Is he also a director in the First National Bank?—A. Yes, sir.

Q. Who is E. H. Goodrich?—A. He is the superintendent of public instruction of the county.

Q. Do you know whether he is connected with either of the banks?—A. He is vice-president of the Merchants' National Bank.

Q. Isn't he president of the Merchants' National Bank?—A. He may be.

Q. Is he not also a veteran of the civil war—a Union veteran?—A. Yes, sir.

Q. Is the same Mr. Goodrich to whom you referred on the cross-examination as having been shoved off the sidewalk once or twice by colored men?—A. Yes, sir.

Q. You learned of this after the occurrence of the 13th?—A. Yes, sir.

Q. They asked you about the Miller Hotel. This office in the Miller Hotel, I understood you to say on the cross-examination, is at the corner of Thirteenth and Elizabeth streets—the building?—A. Yes, sir.

Q. Are there any windows in that office facing on Thirteenth street?—A. Yes, sir.

Counsel for the accused:

He testified that there was one.

Q. There was one?—A. Yes, sir.

Q. And a door?—A. Yes, sir.

Q. A very large door, is it not?—A. Yes, sir.

Q. If there were a light or a bright light, as you stated, in that office on that night, wouldn't it shine out through this window onto Thirteenth street?

Counsel for the accused objected to this question as follows:

I object to that question; he didn't say it was a bright light; he didn't know what kind of a light it was, but was under the impression that it was a lamplight. I appeal to the record.

To which the assistant to the judge-advocate replied:

My object was to bring this out and clear up the testimony.

To which counsel for the accused replied:

This objection is on the ground of repetition. If it is to clear up anything, all very well and good. I covered that very clearly. He testified positively that it was a lamp and it would shine through that window.

To which the assistant to the judge-advocate replied:

That is admitted then.

To which counsel for the accused replied:

It is the testimony.

To which the assistant to the judge-advocate replied:

My object was to clear up the testimony on that point. We will withdraw the question to save time.

Q. You state, Doctor, that this firing came from a southerly direction generally?—A. Yes, sir.

Q. When you were going down the street with your brother?—A. Yes, sir.

Q. Would that be from the general direction of the post—Fort Brown—or not?—A. From the direction of the post.

Q. Now, as to those shells being Springfield shells that you found. Those are the same shells that you showed to Major Penrose when you called on him on the morning of the 14th?—A. Yes, sir.

Q. Mr. Creager was there?—A. Yes, sir.

Counsel for the accused:

I don't know what shells you refer to.

The assistant to the judge-advocate:

Some of the shells he picked up either at the Miller Hotel corner or at the Starck place.

Q. When you showed him those shells and put them on the desk, he saw them, did he not?—A. Yes, sir.

Q. What was it he said? Just repeat that to the best of your recollection?—A. "Doctor Combe, this is very strong evidence; it looks as if some of my men did the shooting, but how they got their ammunition and how they got their guns I don't know," or something to that effect.

Q. Mr. Dennett, the gentleman, as I understand you, that lives in the lower part of town near the reservation, and claimed to have been affronted or claimed that his family was affronted by the using of obscene language or swearing on the part of these enlisted men of the Twenty-fifth; who is he?—A. He is a worthy citizen of the town of Brownsville.

Q. How long has he been living there in Brownsville?—A. As far back as I can remember.

Q. Do you know how he came to Brownsville, from your knowledge of him and what he has told you?—A. He came with his family. His father was commanding a colored volunteer regiment.

Q. When?—A. About the end of the civil war, so I am told.

Q. When did you first see the wounds on the horse of the lieutenant of police?—A. The wounds in the horse?

Q. When did you first see them?—A. The following morning.

Q. About what time, more or less?—A. About the time that I went down to the corner of Miller's Hotel alley—about 6 o'clock.

Q. How many wounds did you see in the body of that horse, more or less?—A. Three that I can remember.

Counsel for the accused:

May it please the court, that has been testified to positively and directly, as to the number of wounds. The gentleman is talking about saving time. I don't care how many times he repeats it, but it simply encumbers the record.

Q. You were asked upon the cross-examination if you knew a Mr. Wreford who is said to have written a letter to Senator Culberson about the early part of June, I think, complaining of the colored troops being sent to Brownsville. Where did Mr. Wreford live at that time? Where was his residence?—A. In Matamoros, I think.

Q. He had a commission office, had he not, at the corner of Thirteenth and Elizabeth streets?—A. Yes, sir.

Q. Where this horse was found?—A. Yes, sir.

Q. Did he himself live in Matamoros?—A. Yes, sir.

Q. Is Mr. Wreford a property owner or taxpayer in Brownsville or in Cameron County?—A. I don't know.

Q. That you know of?—A. I don't know.

Q. Did you ever hear of him having any interests there except this little office?

Counsel for the accused:

May it please the court, that is entirely improper. The witness stated he did not know, and if he wants to prove that the record is the best proof. We object to that.

Q. You say you don't know?—A. No, sir; I don't know whether he owns any property there or not.

Q. How long has he been living in Matamoros?—A. I can't say.

Q. He was living there at that time?—A. Yes, sir.

Q. Been living there since?—A. Yes, sir.

RECROSS EXAMINATION.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. You don't mean to give the impression that Mr. Wreford isn't doing business in Brownsville every day?—A. No, sir.

Q. He is one of your business men in Brownsville?—A. Yes, sir.

Q. He happens to have his residence across the river?—A. Yes, sir.

Q. Where does Mr. Dennett live?—A. He lives in Brownsville.

Q. Does he live anywhere near this place on the map you said within a certain number of yards from the post?—A. I said within one square of the post.

Q. Won't you show us?—A. (Witness indicates on map.) He lives at this corner.

Q. On the west corner of Adams and Fourteenth streets?—A. Yes, sir.

Q. Which direction does his house face?—A. It faces that way (indicating).

Q. It faces Adams street?—A. Yes, sir.

QUESTIONS BY THE COURT.

Q. When you saw Major Penrose near the garrison gate on Elizabeth street about 1 a. m., August 14, 1906, did you inform him of the several instances of damages done to citizens and buildings of Brownsville by the shooting that had just occurred?—A. I have so stated.

Q. After finding the empty cartridge shells, clip, and ball cartridge at corner of the Miller Hotel, Brownsville, about 1.30 a. m.,

August 14, 1906, why did you not immediately return to the post and inform Major Penrose of your discovery?—A. I should be corrected—I said 2 o'clock.

Q. Well, at 2 o'clock, then?—A. Because I was occupied with my other duties at that moment, and as I told Major Penrose I would be down in the morning, I kept the clips with me until morning.

Q. Will you state what duties you were performing at that time which you considered so important as to prevent you from returning and reporting this matter to the accused?—A. As I have already stated, the town was in a state of excitement, and as executive of the city I considered it my duty to be in the town.

Q. Did you not understand at that time that Major Penrose, the accused, believed that citizens had done the shooting?—A. He so stated to me.

Q. Did Major Penrose, to your knowledge, take any steps to detect whether any number of his men were engaged in the "shooting up of Brownsville" on the night of August 13, 1906, and if so, did he take any steps to bring them to justice?—A. I do not know.

Q. Was Major Penrose aware that the citizens' minds were inflamed against the soldiers on the afternoon of August 13, 1906?—A. I so stated to him at 5 or 5.30 of the afternoon of the 13th of August.

Q. Have you ever noticed any member of the command stationed at Brownsville whose face was marked with spots, during your service as attending surgeon with the battalion of the Twenty-fifth Infantry?—A. If there was any such man in the hospital, I don't remember.

Q. To the best of your knowledge, did Major Penrose take any steps to find the culprit who had made the assault on Mrs. Evans?—A. Major Penrose stated to Mr. Evans and myself that he would do all he could to apprehend the culprit. What measures he followed, at the moment I can't say.

Q. Did you take any such steps?—A. No, sir; with the exception of instructing the chief of police to investigate the matter, I personally took no further steps.

Q. At what points on the streets and alleys did you post the special men you had selected to guard the town against the soldiers entering it?—A. I can best show that on the map—Thirteenth and Levee, the alley on Thirteenth street between Levee and Elizabeth, the alley between Elizabeth and Washington streets, Washington street, Jefferson street (the name is not here, but I think it is Jefferson), the alley between Washington and Adams streets, the next alley, and so on.

Q. Do you know whether it is customary for citizens to clean their guns after use? I refer to the citizens of Brownsville.—A. I really don't know how to answer that question.

(The question was reread to the witness.)

A. The only way that I can answer that is that when I go hunting and use my gun I clean it, and I suppose other people do the same thing.

Q. Was the body of Frank Natus warm when you first examined him?—A. No, sir.

Q. Had Natus been affected with heart disease do you believe he would have dropped dead unless he had been shot as he was that night?—A. No, sir. I should like the question preceding that repeated.

Q. Was the body of Frank Natus warm when you first examined him?—A. I said "No," but I saw the body over an hour after the man was shot, or is said to have been shot.

Q. What were the soldiers doing uptown at the time you saw them with Captain Lyon, after you had sent Dr. Joe Combe to phone Major Penrose?—A. I can only state what Captain Lyon said to me they were doing.

(The question was reread to the witness.)

A. Captain Lyon told me that they were looking for Captain Macklin.

Q. Did you find out whether any of the citizens of Brownsville fired pistols or guns on the night of August 13 as a warning that the town was being attacked?—A. Outside of the police; no.

Q. Did the committee come to any conclusion as to who placed up the placard the night of the citizens' meeting to the press?—A. Yes, sir; we thought it was done by a soldier or soldiers.

Q. On the night of August 13 did you hear Major Penrose, the accused, give any orders to any of the commissioned officers under his command?—A. I heard Major Penrose order Captain Macklin to take men of his company, and I heard him say, "Gentlemen, verify your men," or something like that; I don't remember the expression.

Q. At that time did you hear the accused give any orders to noncommissioned officers of his command?—A. The night of the 13th?

Q. Yes, sir.—A. I do not remember.

Q. Did you hear any of the commissioned officers report to the accused at that time?—A. I heard Captain Macklin report to him.

Q. Did you, at that time, or any time the next day hear any noncommissioned officers report to Major Penrose as to the execution of his orders?—A. I do not remember.

Q. Might not the accused have said to the Citizens' Committee on the morning of the 14th of August last, at the time said committee called upon him, "I did not inspect the guns myself; I took the report of the officers?"—A. There is a possibility, but to the best of my remembrance the word was noncommissioned officers.

Q. Can you swear that Major Penrose did not say officers, but said noncommissioned officers?—A. No, sir; I can't swear that.

Q. You have stated that you believed a particular soldier or soldiers put up the placard, excluding dogs and soldiers from the press meeting, out of spite and in revenge for having been, as they thought, affronted by the police; do you or did you believe that probable?—A. Yes, sir.

Q. Do you then believe that it would be possible for a certain class of soldiers to take such action to make it appear that the citizens were prejudiced against soldiers?—A. Yes, sir.

Q. When the accused, Major Penrose, told you on the night of August 13 that he did not believe his men had shot up the town, but that citizens had done the shooting, did he say why he believed that to be the case?—A. He said that it had been reported to him.

Q. Did you on the afternoon of August 13, 1906, take any special precaution to prevent trouble arising from the excited condition of the citizens?—A. None, except to tell the chief of police to instruct his officers to be especially vigilant, as I didn't anticipate any such occurrence as took place.

Q. Did you investigate the pistol shots to ascertain who had fired them, and if so, with what result?—A. I investigated the firing of

what I thought to be a .45-caliber pistol, several shots of which I heard, and I was informed that they were the shots fired by the policemen.

Q. When did you first learn of the alleged assault on Mrs. Evans and from whom?—A. I heard it spoken of on the streets on the morning of the 13th of August, and then the chief of police reported it to me sometime during the forenoon.

Q. After you found the empty shells at the corner of the Miller Hotel, was there anything so important as the necessity of promptly informing Major Penrose of this discovery? If so, what was it?—A. Yes, sir; I thought it my duty to remain on the streets and in the town with the citizens.

Q. Was the posting of the placard looked upon seriously or taken as a joke?—A. It was looked upon seriously inasmuch as a committee was appointed to go down and see the commanding officer about it.

Q. Who reported to you that the police had fired pistol shots?—A. The chief of police.

Q. How long do you believe Natus had been dead when you first saw the body?—A. It is my opinion that he may have been dead over an hour.

Q. Please state to the court how long you have known the lieutenant of police, Dominguez, who was wounded August 13; what public offices, if any, he has held, and what is his reputation in the community in which he lives for truth and veracity?

To this question counsel for the accused objected, as follows:

I object to that question; it is not proper examination by the court; it has already been ruled on and we had not as yet attacked or commenced to attack the reputation of this man for truth and veracity. If the court cares to go into this later on when the man's veracity is attacked, that is another proposition, but we claim that the interests of this accused will be seriously impaired if this question is gone into by the court at this time, and the court has ruled that the prosecution could not do so.

The president:

May I ask the pleasure of the court as to whether that question be asked?

A member:

I would like to know whether the testimony of the lieutenant of the police is in the court room at present?

The judge-advocate:

The entire proceedings are in the court room with the exception of this forenoon's proceedings.

The same member:

I would like to say that I believe that the counsel did make the statement that he intended to prove that this witness was a liar at the time his testimony was being taken.

Counsel for the accused:

May it please the court, the statements of counsel are not evidence, and until the witness has been attacked directly with evidence we maintain that it is not within the province of the prosecution or within the province of this court to bolster up the reputation of any witness; and to do so, in our opinion, interferes with the rights of this accused before this court.

The accused, his counsel, the reporter, and judge-advocates withdrew, and the court was closed, and, on being opened, the president announced that the question was withdrawn.

Counsel for the accused:

We now ask formally the name of the member who formulated and propounded this question.

The president:

The presiding officer of the court does not know.

Counsel for the accused:

In behalf of the accused I request that he be informed and that it appear of record who the officer or member of the court is that propounded the question to which we objected.

The president:

The court would like to know why counsel for the accused desires to know.

Counsel for the accused:

In order to enable us to determine upon our procedure in connection with the case. We are not prepared to state anything further or more definite at this time.

The accused, his counsel, the reporter, and judge-advocate withdrew, and the court was closed, and, on being opened, the president stated as follows:

I am instructed by the court to state that the member who asked the question was Major Taylor.

Major Taylor (a member of the court):

Mr. President, in order that the matter might be thoroughly understood, the only reason I asked that question was in the hope of saving time, and I knew that the witness would probably be recalled and have that same question put to him, and for that reason I asked the question at this time.

Counsel for the accused:

We would like to ask Major Taylor if his purpose was to relieve this particular witness and save time in that way?

Major Taylor:

I knew that he was going to be recalled, and everything of that kind, and it was simply a matter of saving unnecessary time. I thought it was just as well to ask it now.

Counsel for accused:

With that explanation, we have nothing further to say.

QUESTIONS BY THE COURT CONTINUED.

Q. At what hour did you first see the body of Natus after he was shot?—A. I can't say positively; it was after I left the post. It might have been about half past 1.

Q. Was there anything in the appearance of the body of Natus to indicate that he died of heart disease?—A. I can't say.

The court announced that it was through with the witness.

The judge-advocate stated that he had no further questions to ask.

RECROSS-EXAMINATION.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. What damage specifically to buildings did you report to Major Penrose about the hour of 1 o'clock a. m. on the morning of August 14, 1906? The time that we refer to in this question is when you came

what I thought to be a .45-caliber pistol, several shots of which I heard, and I was informed that they were the shots fired by the policemen.

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RECROSS-EXAMINATION.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. What damage specifically to buildings did you report to Major Penrose about the hour of 1 o'clock a. m. on the morning of August 14, 1906? The time that we refer to in this question is when you came

in there and saw Major Penrose after midnight the night of August 13-14, 1906.—A. I simply stated that quite a number of buildings had been fired in, to the best of my remembrance.

Q. You didn't specify which buildings or what damage?—A. I do not remember.

Q. You have stated to the court that your duties as executive of the city of Brownsville prevented your seeing Major Penrose after this first visit; you have also stated to this court that you sat on that Elizabeth street entrance to the Miller Hotel for some time?—A. Yes, sir.

Q. How long would it have taken you to go from the Miller Hotel to the post during this time or any time?—A. A few minutes.

Q. You want to be understood then as saying that your duties were so important that you couldn't have spared yourself at any time before 3 o'clock to have stepped down there that few minutes?—A. Yes, sir.

Q. You had not at that time any shells or clips or anything of that kind that you subsequently presented to him the next day?—A. I had them in the morning.

Q. But at your only interview with Major Penrose that night?—A. No, sir; I had none then.

Q. I wish you would explain to this court exactly and specifically what instructions you gave to your chief of police touching upon the subject of the inflamed condition of the minds of the people of Brownsville on the afternoon of August 13 last?—A. I simply told him I had been down—mentioned the fact to the best of my remembrance—to the garrison and told him to be on the qui vive and he himself to be about the streets as late as possible. That is all I said.

Q. You have already stated under oath twice that you did not have any reason to anticipate any action on the part of the enlisted men at Brownsville.—A. No such action as occurred.

Q. Then were your instructions directed to the chief of police for the purpose of watching the citizens in their inflamed condition or not?—A. No, sir; not especially. It was to prevent any soldiers coming into town.

Q. But you have said you had no reason to anticipate the soldiers coming into town.—A. I didn't say they wasn't coming into town.

Q. You didn't contemplate the citizens with the inflamed condition of their minds?—A. No, sir; it never entered my mind. It was on account of the soldiers might be coming into town.

Q. Hadn't you been assured by the commanding officer that they would not be allowed to come into town?—A. That is no reason why they might not escape and come in to town.

Q. As a matter of fact, were you not informed that patrols would be sent down, and were not patrols sent down?—A. I was informed by Major Penrose that patrols would be sent down and I have been told they were.

Q. And you were told by him that he would issue the order and carry it out to keep the men from going in to town?—A. He so told me.

Q. What hour was it you instructed the chief of police about this?—A. Late in the afternoon; I do not remember the hour.

Q. Where?—A. On the street.

Q. How long after you had talked to Major Penrose?—A. I can't say; probably an hour or two.

Q. Had there anything occurred in the meantime to warrant your giving the special instructions in the hour you had talked to Major Penrose and the time you talked to him?—A. Not that I can remember.

Q. I wish you would now again tell specifically to this court why you gave those instructions.—A. Which instructions?

Q. To your chief of police.—A. Because I had said to Major Penrose, as I have stated in the evidence, not to allow his men to come down there; I feared some of them might come down there, not to do any harm, but they might come down there and I didn't want them in town that night.

Q. Why?—A. Because there might have been trouble on account of the excitement in the town over what occurred the night before.

Q. In other words, you think some of your citizens of Brownsville might have done them harm?—A. I thought there would have been trouble.

Q. Do you think that some of the citizens would have done them harm? That is the question.—A. Owing to the inflamed condition of the people resulting from the attack of a colored soldier on a white woman, I felt that some hot-head might precipitate trouble, which is a very natural supposition in any section of the country.

Q. I should say so, and that is what we wanted you to tell the court. And yet you didn't know at that time, Major, as mayor of the city, whether that thing was simply the imagination of Mrs. Evans or whether it was the truth?—A. It was generally spoken of.

Q. I didn't ask you what was generally spoken. Did you or did you not at that particular time, or do you now know, that it is a truth that she was assaulted by anybody?—A. I have stated to you repeatedly that I was not an eyewitness.

Q. And you also stated to me that you didn't investigate it further than to accept what Mr. Evans said.—A. And also the chief of police.

Q. And you got no further report?—A. No, sir.

Q. You have nothing up to this minute, have you, aside from Mr. Evans' statement to you?—A. Except the chief of police reported to me and said that such a thing had occurred.

Q. Did he tell you he had any evidence aside from Mr. Evans?—A. No, sir.

Q. You didn't act on and pursue your chief's report any further?—A. No, sir; the investigating committee took that up. That was their duty.

Q. Have you received the report of the investigating committee?—A. No, sir.

Q. Who were they?—A. The citizens' committee of fifteen.

Q. You were asked the question about the cleaning of guns, whether it was customary for men to clean their guns. Now, we will formulate that question a little differently: If men have been guilty of firing their pieces improperly, is it or is it not a natural thing for them to clean them before they can be seen?—A. Certainly.

Q. Now, which one of your policemen did do any firing that night?—A. It was reported to me that Genaro Padron did.

Q. Where did he fire?—A. Somewhere on Washington street.

Q. How many shots?—A. I do not remember.

Q. In what direction?—A. In the direction of the garrison.

Q. But you don't know how many shots?—A. No, sir.

Q. You never found any of the shells?—A. No, sir.

Q. You never had them looked for?—A. No, sir.

Q. Then there was firing toward the garrison by the police?—A. By the police, in return to the firing which was coming from the other direction. He did it in self-defense.

Q. Just tell the court how this would appear in self-defense? Just locate the man?—A. He was being fired on and he returned the fire with his pistol as he ran on Washington street.

Q. Where?—A. On Washington street, as I have been told.

Q. At what hour?—A. About midnight, when the firing was going on.

Q. In the early part or the latter part of the firing?—A. I do not know, sir.

Q. Do you, as a matter of fact, know whether he fired before or after he was fired at?—A. Only according to his report and statement.

Q. You can not locate him on Washington street?—A. Only by hearsay.

Q. And where was that—it was reported to you officially?—A. On Washington street, between Twelfth and Thirteenth, I believe.

Q. Did you realize that that was an ex-parte and interested statement on the part of your police?—A. Will you please explain the question to me?

(The reporter read the question to the witness.)

A. No, sir; I took it to be so.

Q. It was ex-parte, certainly?—A. Yes, sir.

Q. And in view of the fact that it was reported to you by Major Penrose, as commanding officer, that it was reported to him that men were firing over the post and you found that one of your men or policemen were firing in that direction, would it not be an interested report? Yes or no?—A. I don't think so.

Q. Then, do I understand you to say that when those other men were alleged to have fired the other way their statements would not be interested statements? The soldiers I mean now?—A. I hardly know how to answer your question. The man was discharging his duty as an officer. He was attacked and he returned the fire—you have his statement in the book.

Q. A special report was made to and you were also informed as mayor of that city by the commanding officer of that post that shots had been heard coming over the garrison and the garrison was attacked, you found that one of your policemen had been shooting over the post. Now, then, when you went over his statement was that ex-parte and interested or not?—A. I still maintain that I don't know how to answer your question.

Q. You still say that it was not an interested statement; that he was not interested in the matter?—A. I felt that he made an official report and I believed it.

Q. It isn't a question of your belief; it is a question, was not he naturally interested. Wasn't it to his interest to explain that clearly to you so as to appear best for him or not?—A. That is possible.

Q. Isn't it true?—A. I should imagine so.

Q. Well, don't you know, Major Combe, that under those conditions it was an interested report, that he was interested in making it to you?—A. Now that you have explained, I think so.

Q. Then it was ex-parte and interested?—A. I think so.

Q. And you didn't take the trouble to investigate whether he told you the truth about the direction of the firing?—A. The investigating committee took the matter up.

Q. You don't know?—A. No, sir; because it was in their hands.

Q. You didn't examine his gun to see how many times he fired it?—A. No, sir.

Q. And you didn't examine it to assure Major Penrose that none of your men had fired toward the post?—A. No, sir.

Q. Did you ever tell Major Penrose that one of your men fired toward the post?—A. I do not know whether I did or not.

Q. What Padron was it?—A. Genaro Padron.

Q. Now, you were asked a question about warning by firing, and the impression had been given forth that there was a lot of that firing. Did you investigate it or not?—A. I have stated that I didn't investigate it. I accepted the report that they were alarm shots.

Q. Without further investigation?—A. Yes, sir.

Q. Might not a number of these shots have been fired over the post then?—A. They might have. People might have raised their pistols out of the windows and they could have gone over the post.

Q. Could they have held them horizontally so far as you know?—A. Of course.

Q. That might have passed over the post?—A. They might have.

Q. And persons in that post hearing such shots coming over would be just as warranted in the belief that they were being attacked as you people would to believe you were being attacked from the post?—A. It is possible.

Q. Is it true?—A. A matter of opinion.

Q. If you were standing there and heard those shots coming over, wouldn't you claim they came from the town?—A. I might have thought so; yes, sir.

Q. Never was the report of this committee—officially it was never submitted to you?—A. No, sir. The fact of the matter is I haven't examined any report.

(The reporter was requested to read the following question and answer from the court's examination of the witness: "Q. Did you find out whether any of the citizens of Brownsville fired pistols or guns on the night of August 13 as a warning that the town was being attacked?—A. Outside of the police; no.")

Q. Do you mean to say by that answer that has just been read that no other citizens did fire their pieces that night?—A. No, sir; I do not want to make that impression.

Q. As a matter of fact there may have been a great number of shots by people outside of the police—I mean people of the town?—A. There were quite a number of shots fired.

Q. You don't know what direction those shots went?—A. No, sir; I couldn't say. This firing was mostly toward rifle firing, as I have characterized it.

Q. Now, let's go back to this press affair. As I understand, this objectionable sign was brought to you or some committee?—A. It was brought to me. I was very indignant over it, because my name was signed to it.

Q. Did you have any evidence at all fixing that on anybody, soldier or citizen?—A. No, sir; simply circumstantial.

Q. Just inferences?—A. Yes, sir.

Q. It never was found out who did it?—A. Positively, no; but I don't think a citizen in Brownsville would have done it.

Q. That is simply a matter of opinion?—A. Yes, sir.

QUESTIONS BY THE COURT.

Q. You say the pistol firing was mostly toward the end of the fusillade; do you mean to say that you heard bullets going over you before you heard the pistol shots?—A. Yes, sir.

(The witness was then excused.)

The court then took a recess until 4 o'clock p. m.; at which hour the members of the court, judge-advocates, the accused, his counsel, and the reporter resumed their seats.

R. B. CREAGER, a witness for the prosecution, was duly sworn and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please state your name, residence, and present occupation.—A. R. B. Creager; Brownsville, Texas; lawyer.

Q. Do you hold any official position?—A. Why, I am United States commissioner and deputy clerk of the United States circuit and district courts of the southern district of Texas.

Q. Do you know the accused? If so, state who he is.—A. Major Penrose; I do know him.

QUESTIONS BY THE ASSISTANT TO THE JUDGE-ADVOCATE.

Q. How long have you lived in Brownsville, Mr. Creager?—A. Twenty-odd years.

Q. Were you in Brownsville on the——A. Excuse me. By that I mean that it has been my home that long. I was away five years, at college.

Q. Were you in Brownsville on the night of the 13th of August, 1906?—A. I was not.

Q. Where were you?—A. I was at Point Isabel, 22 miles distant, on the seacoast, or rather, Gulf coast.

Q. When did you return to Brownsville?—A. I returned to Brownsville the morning of the 14th of August.

Q. When did you go down to Point Isabel or leave Brownsville for Point Isabel on that trip—you say you were at Point Isabel on the night of the 13th?—A. I had my family at Point Isabel at that time and I would go down in the afternoon—leave at 5 o'clock—and return the next morning.

Q. Did you go down the afternoon of the 13th?—A. I went down the afternoon of the 13th and returned the morning of the 14th.

Q. You were in Brownsville all day the 13th?—A. Yes, sir.

Q. Were you in the post—Fort Brown—at any time during that day of the 13th of August?—A. I think so. With reference to that I would like to say this in the nature of an explanation, that I am not absolutely positive whether it was the morning of the 13th or the 12th. My recollection is that it was the morning of the 13th that I was in the post when I called on Major Penrose the first time.

Q. Just state to the court here the object of your visit or call on Major Penrose, and what passed between you.—A. Reaching Brownsville the morning of the 13th from Point Isabel, as I stated, I am not positive whether this was the 12th or the 13th, but from certain matters I am almost positive that it was the 13th. On reaching town the morning of the 13th, I was met by Fred Tate, the man who struck one of the negro soldiers with his six shooter a short time before. He hunted me up and met me upon the street, my recollection is, and told me that he was in trouble and that he understood charges had been preferred against him with his chief, the collector of customs, Mr. Vann, by Major Penrose, and requested me to look into the matter for him. I don't suppose my conversation with him is material. At all events, it resulted in his requesting me to call upon Major Penrose. He also stated to me that Lon Evans, the man whose wife had been insulted, my recollection is, the night before—that is the point to which I wish to call attention that makes me think it was the morning of the 13th that this call was made, because I have since been informed that this assault took place on the night of the 12th.

Q. Now, you learned it on this morning?—A. Yes, sir. And Tate informed me that Evans desired to see me in reference to his matter. In other words, he had seen Evans looking for me and inquiring for me.

Q. Did you meet Evans?—A. Evans come to me the same morning and was considerably wrought up over the alleged assault on his wife and told me the particulars of it and asked me what he should do. I told him there was practically nothing he could do.

Q. (Counsel for the accused.) Do I understand you accepted the position of counsel for Messrs. Tate and Evans?—A. No, sir.

Q. You didn't appear as counsel for either of them?—A. No, sir.

Q. At no time?—A. No, sir.

Q. And you didn't appear before Major Penrose in that capacity?—A. No, sir. They came to me as United States commissioner simply, asking my advice, not as a lawyer; they didn't employ me, didn't pay me, but simply asked my friendly services. I told Evans, as I was about to say, that all he could do was to call upon Major Penrose and ask him if possible to punish the man who was guilty, if any, and that it would be extremely difficult to discover who the culprit was because his wife's description of the man who committed the assault was very meager. I saw he was wrought up, and I suggested to him that I would go with him, if he desired it, to call upon the major. I told him I couldn't go just at that time, but would meet him later and go with him. At all events, he didn't go with me, but I called upon Major Penrose. I was told he was in the administration building.

Q. What time was that?—A. My best recollection, it was 10 o'clock. I had as yet not met Major Penrose, who hadn't been in the town very long. I was told at his office that he had just stepped out on the way to his quarters, my recollection is, and that if I would step out on the porch I could call to him or very easily catch him; he had just left. I stepped out on the porch, and Major Penrose had walked possibly 50 to 75 yards, maybe, from the door, and I called to him and stopped him and walked out and introduced myself to him, and he invited me to return to the office with him, which I did,

and on returning to the office he introduced me, my recollection is, to two or three other officers who were in the room, sat down, and began a conversation, and I introduced myself to him as United States commissioner and offered my services in that capacity if the occasion should arise, as it sometimes does down there. Do you wish me to go into our conversation?

Q. Yes, sir.—A. The major portion of it was simply of a social nature.

Q. No, not that part of it. In regard to the evidence in the Tate matter.—A. I mentioned the fact to him that I was sorry that some feeling had apparently arisen between the town people and the members of his command, and he said, "Yes; that he regretted it, also," and this led up to a discussion of these two points upon which I had really called to see him about. Now, in relating this conversation to me I think it is only fair to say this, that it will be practically impossible for me to even attempt to give the words that passed between us. All that I can remember at this time is the substance of our conversation.

Q. All right, go ahead.—A. I can give you at least the most salient features of the conversation. I don't remember which of the two subjects were touched upon first, but I think the Tate matter, and Major Penrose expressed himself as being satisfied that Tate had struck this man and that he had done it without provocation, or without sufficient provocation, telling me also that he had written to the collector of customs demanding an investigation, or something to that effect. I don't remember whether it was a statement he had demanded or an investigation or whether he demanded that the man be punished, but at all events he had complained to the collector of customs, but that he had received no reply to his letter, and I told him that Colonel Vann was out of town at that time and had been for several days, but would return soon, and I was sure as soon as he did return the matter would be looked into; that I had made some investigation into the matter and had heard Tate's side of it, which I gave to him; and I remember also mentioning the names of most of the ladies who were with Tate the night that this difficulty occurred. Now, I don't know as to the materiality of a part of that conversation, but I will repeat as much of it as I can—the substance of it—and if you don't desire to hear it you can so state. I remember the major saying that his men had as much right upon the streets and sidewalks of the town of Brownsville as any white man, and that the people of Brownsville must recognize that fact. I replied, theoretically that was unquestionably true, but that certainly as long as he was in the South—these men were in the South—and that they would find that as a matter of practice that when a negro and white man met on the sidewalk the negro would have to step aside, or words to that effect. We continued speaking of it for some time, Major Penrose stating to me that he knew both the men involved in the difficulty, and that one of them, at all events, was a very good man. He spoke very highly of him and stated, substantially, that he was a man upon whose word reliance could be placed; that he had looked into the matter and, I think he said, taken the statement of both men in writing. I am not sure of that. At all events, he had taken the statements. I told him I knew only what Mr. Tate had told me and what was currently reported on the streets of Brownsville, but that Mr. Tate

assured me that the ladies in the company would bear him out in all he said in reference to the difficulty, and that I knew these ladies, and that they were above reproach.

Q. Had Mr. Tate told you who the ladies were that were with him?—A. Mr. Tate told me the ladies who were with him.

Q. They are ladies whose reputation and standing is beyond reproach in every respect?—A. Yes, sir; in every respect; but I don't know, as a matter of fact, whether they would bear out Mr. Tate's statement, but he assured me they would, and if they would, implicit reliance could be placed in what they said. That is about the substance in reference to the Tate matter that was brought up.

Q. How long before the 13th had this Tate matter taken place, more or less?—A. I understand since, it was the night of the 12th.

Q. I asked you about the Tate matter.—A. That was several days before; I don't remember just now how many.

Q. Go on with the Evans matter.—A. I want to say on that point that I will not swear positively that this was the morning of the 13th, but to my best recollection it was.

Q. It was prior to the shooting?—A. Yes, sir; and I am almost certain it was the morning of the 13th. We then took up the Evans matter; and Major Penrose expressed doubt as to whether it was one of his command that assaulted Mrs. Evans, to my recollection, suggesting that it was possible that it was some one who had blacked his face and put on a khaki uniform, because when he first expressed the doubt I told him Mrs. Evans stated, so her husband told me, that the man who assaulted her was a large negro in the uniform.

Q. Khaki uniform?—A. I used khaki a while ago, but I should have said uniform. I don't remember whether he said khaki or not. Now, it was either this morning or the following morning that the rest of the conversation that I am about to relate took place, and on this point I will not be absolutely positive whether it was the morning of the 13th or the 14th, but I am morally certain it was the morning of the 13th.

Q. You had two conversations with Major Penrose?—A. I had two conversations with Major Penrose; one before and one after the shooting. I told him that on account of the feeling that existed between the soldiers and the town people, which feeling was very apparent, it would be advisable for him not to permit his men to visit Brownsville at night.

(The reporter was requested to read the next preceding answer, as follows: "A. * * * I will not be absolutely positive whether it was the morning of the 13th or the 14th, but I am morally certain it was the morning of the 13th.")

Q. Your conversation the morning of the 13th was the one prior to the shooting?—A. Yes, sir.

Q. And that is the conversation of which you are morally certain?—A. Yes, sir.

Q. Go ahead.—A. My idea being not in contemplation of any act such as subsequently occurred the night of the 13th, but in contemplation of personal difficulties between members of his command and the town people. If the negroes got out and visited the different joints, such as soldiers usually visit, and got to drinking, it was, I considered, almost sure to result in personal difficulties since the feeling was as high as it was, and I advised him not to permit the men to

leave the post and go into Brownsville at night. Now, on that point I wish to be entirely fair and be distinctly understood that I am not absolutely positive that this was the morning of the 13th, but, as nearly as a man can be in that passage of time, I am sure it was that morning. Major Penrose agreed with me in that respect and said he would keep his men in the post. Now, it is barely possible that that conversation took place the morning of the 14th, but it is merely a bare possibility, and I think not.

Q. That is about the substance of this conversation on the 13th?—A. That was the substance of the conversation on the 13th so far as it bore upon the question of the relations as to his men with the town people.

Q. You say you had a conversation with him on the 14th?—A. Yes, sir; I went to the Point the evening of the 13th, leaving about 5 o'clock and returned the next morning, getting to town about 8 o'clock, and I found the town very much excited.

Q. When did you first learn of the shooting?—A. The hack driver that drove me from the station to my office informed me of the shooting, and on reaching my office—I went by the post-office to get my mail and then on to my office—I had barely gotten in it when the telephone rang, and my recollection is that it was from the quartermaster's office that I was called from and told that Major Penrose requested me to come up to see him at once, if possible. I went down and took a hack, and I believe the same hack—I don't believe my hack had yet left the door of my office—and went on up to Fort Brown, and I was stopped by the sentry. They had sentries about every 10 or 12 feet along the wall at the main gate, and I had some little difficulty in getting in, and I insisted that the sentry call the officer in command, which he did, and I don't remember who this officer was—he was a white officer—and on informing him that the major had requested me to call upon him he admitted me. I drove over to the administration building, and the major was there and he told me he had sent for me; he was considerably agitated and told me that he had sent for me to request my aid as a lawyer, if possible, in clearing up the matter of this shooting, to assist him and to discuss the matter with him. That is just about his way of expressing it. We then discussed the matter, and I don't really remember just what passed between us on that occasion, except that Major Penrose, during the first portion of our conversation, in speaking of the punishment of his men or of the men who had been guilty of this shooting would always preface his remark with something of this kind, "If my men did the shooting, so and so, they deserved to be punished." I recall that distinctly, because at one time I think that Major Combe came in, the mayor of the town, while we were discussing the matter, and I remember his producing some shells, I think some empty and some loaded Springfield shells, from his pocket and laying them on the major's desk. He took them up and examined them.

Q. Do you remember what Major Combe said when he put those shells and ammunition on the desk?—A. No, I don't, just at that time.

Q. Or what Major Penrose said in that connection? —A. Yes, sir. I will state this, that I have read Combe's testimony in the papers as to what passed at the time and it is substantially what passed. My recollection wasn't just exactly like that.

Counsel for the accused:

May it please the court, we don't want what the witness has read in the papers. We want his recollection, not what Major Penrose is reported to have said in the paper. Everybody knows that the paper never gets anything right.

Q. Just give us your recollection.—A. My recollection of that passage was something like this: After Combe handed Penrose the shells we continued the discussion for some few moments and Penrose again used the expression, "If my men did this shooting." I got up out of the chair where I was sitting and said, "Major, we can not discuss this with a promise of that kind. We know your men did the shooting, and now it is simply a question of discovering which ones did the shooting," or something to that effect, and then he replied, by way of parenthesis—I am not attempting to give his language, but the substance of it—"Well, it seems morally certain that they did do it," or "It would seem that they did do it," and from that time on I don't think he again used the expression, "If my men did do it" in the course of our conversation. We discussed the matter at some length. I asked him if he had the men's guns examined, and he said yes, he had that morning, the morning of the 13th.

Q. The morning of the 13th?—A. The morning of the 14th; the shooting took place the night of the 13th. That he had them examined that morning, and my recollection is that he told me he hadn't examined them immediately following the shooting.

Q. Did he state, more or less, about what time in the morning he had had them examined?—A. No, sir; he did not.

Q. Did he say as to whether it was before or after daylight?—A. I don't recollect that he made such a statement at all as to the exact time. I remember him stating that he didn't see how his men could possibly have done the shooting and gotten back in the post without detection. There was quite a good deal of that conversation. I should judge now an hour or three-quarters of an hour, and probably half the time Major Combe was present. He came in after my arrival. I think that I have given you about all that I can recollect of that conversation.

Q. Did you see those shells that Major Combe brought in?—A. Yes, sir.

Q. Did you examine them?—A. Yes, sir; I picked them up and examined them.

Q. Were there any clips amongst them or any of those shells in clips?—A. I don't remember; my recollection is no.

Q. Do you know, Mr. Creager, what those shells were?—A. At the time there was no doubt in my mind but that they were Springfield shells.

Q. You had seen Springfield shells before which are used in the Army?—A. I have fired them out of the army gun many a time.

Q. As a matter of fact, did you ever use this Springfield gun at the target range at Point Isabel last summer?—A. Yes, sir; I was out a number of times shooting on the range with the officers.

Q. Did you yourself find any of these shells in town about that time?—A. No, sir; I did not.

Q. Did you find yourself any bullets?—A. I saw the collection that was in the hands of the chief of police or the mayor. They were in the hands of the mayor, and I went up there to see them; also the bandolier.

Q. Mr. Creager, now we will come to the press matter. Do you remember a reception or entertainment given to the Texas Press Association by the people of Brownsville last spring, I think it was?—A. Yes, sir.

Q. Were you on the committee of arrangements?—A. Yes, sir; there was a committee of reception or entertainment.

Q. Was that a public affair or were invitations issued?—A. Verbal invitations were issued.

Q. Do you know whether any instructions were given with regard to the admission or the nonadmission of people who were not invited?—A. Only by hearsay. As to any instructions being given, I didn't give them myself, but we were allowing no one entrance into the open pavilion in which we were holding the little affair except those that were invited; that is, they were supposed to be the only ones present.

Q. (Counsel for the accused.) I would like to ask if the witness makes that statement of his own knowledge?—A. Makes what of my own knowledge?

Q. The statement you have just made—that you knew they were not admitted. You prefaced it by saying you only knew that by hearsay.

(The reporter was requested to read the preceding answer, as follows: "A. Only by hearsay. As to any instructions being given, I didn't give them myself; but we were allowing no one entrance into the open pavilion in which we were holding the little affair, except those that were invited; that is, they were supposed to be the only ones present.")

A. My statement that only those that were invited were supposed to be present.

Q. Yes, sir.—A. Why, certainly, that was of my own knowledge. I was one of the five who had the matter entirely in charge.

At 4 o'clock and 40 minutes p. m. the court adjourned until 10 o'clock a. m. Friday, February 15, 1906, the following day.

CHAS. E. HAY, Jr.,
Captain and Judge-Advocate, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., February 15, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocate.

The accused, his counsels, and the reporter were also present.

The reading of the proceedings of February 14 was dispensed with.

The judge-advocate here stated as follows:

We announced yesterday afternoon that we had finished with the witness, but there is one question we failed to ask and we would like the indulgence of the court in that regard.

There being no objection, the judge-advocate then asked witness as follows:

Q. Mr. Creager, I think you said yesterday afternoon that you were morally certain that a certain conversation you had with Major Penrose was had on the morning of August 13, 1906. Will you please

explain why you are morally certain?—A. For this reason: I learned that the assault on Mrs. Evans occurred on the night of the 12th, and my conversation took place subsequent to this assault. For me to have advised him to keep his men out of town at night would have been absurd on the morning of the 14th, consequently I am morally certain it was the morning of the 13th.

The judge-advocate then announced to the court as follows:

For the information of the court and the counsel for the defense, I would like to announce that Mr. John I. Kleiber, who has been acting as assistant, has retired from the case.

CROSS-EXAMINATION.

QUESTIONS BY THE ACCUSED.

Q. You were one of the committee of five who had charge of the press affair, the so-called press affair, in Brownsville, I believe you said?—A. Committee of five or seven; I am not positve of the exact number on it.

Q. And this was held where—the entertainment?—A. It was held in the skating rink; an open-air pavilion near the depot.

Q. And where is it?—A. In Brownsville.

Q. Whereabouts?—A. Near the St. Louis, Brownsville and Mexican passenger depot.

Q. And it covers what portion of a block?—A. You mean the pavilion alone?

Q. Where the entertainment was.—A. The pavilion stands in an inclosure, possibly containing a number of acres; it is in the portion of town not particularly settled, though immediately adjoining the particularly settled portion of town.

Q. And how many entrances to that?—A. To the best of my recollection, one.

Q. And there was a policeman stationed at this entrance?—A. I think so.

Q. And his instructions?—A. I did not instruct him.

At this point the president of the court requested the judge-advocate to please state the reason why the assistant judge-advocate had retired from the case, to which the judge-advocate replied as follows:

Simply because he is a district attorney for Cameron County, and his official duties have called him back to his post of duty, as I understood his explanation.

CROSS-EXAMINATION CONTINUED.

Q. Do you know what his instructions were?—A. Only by hearsay.

Q. As a member of the committee, was not action taken about his instructions?—A. No, sir; not in committee meeting.

Q. Do you know if any members of the committee actually visited the commanding officer in connection with the instructions of that policeman?—A. My information is, yes.

Q. You were not a member of the committee that visited the commanding officer?—A. I was not.

Q. As a matter of fact—before I ask this question I will repeat your testimony of yesterday as recorded: "My statement that only those that were invited were supposed to be present? Q. Yes, sir.—A. Why, certainly, that was of my own knowledge. I was one of the

five who had the matter entirely in charge." Then you are not sure as to whether it was five or seven; your recollection is a little indistinct as to the number on the committee?—A. As to the number on the committee.

Q. So when you said five yesterday you were not accurate?—A. Not necessarily so.

Q. It was not accurate, you admit now?—A. I stated yesterday "my recollection is," and I think the record will show it. I was not positive as to the number on the committee. I think that is on the record.

Q. It fails to show here. You stated positively just as I have read.—A. At that portion, yes.

Q. You did not modify that statement. You stated positively there were five members of that committee and that you had the matter entirely in charge.—A. You will notice that the mentioning of the number of the committee there was merely incidental.

Q. It is giving positive information to this court as to who the committee was and as you remember it.—A. I did not pretend to state who the committee was.

Q. Is your recollection as inaccurate on all points as on that?—A. Your question is not very clear.

Q. Am I to understand that the rest of your statements are to be modified in the same way as you this morning modify your statement of yesterday as to the five members of that committee?—A. It is for you to pass on my evidence before this court.

Q. I have a right to ask you that question, which you will admit as a lawyer, whether or not your recollection of this is as accurate as your recollection of other things, and we have a right to your answer and we insist on it?—A. I have no objection to answering your question. Many portions of my evidence, as will be invariably the case with any witness—my recollection of certain points will be more clear than others. My recollection of important passages will naturally be more clear than that of unimportant matter.

Q. And the witness is to determine the importance of these matters or the court?—A. The court, by all means.

Q. Then, if you will bear that in mind in your answers, we will appreciate it.—A. Thank you.

Q. As a matter of fact, did this policeman exclude soldiers that night from the entrance to that entertainment?—A. Do you wish me to give you hearsay?

Q. We want your knowledge as a member of that committee.—A. My knowledge upon that point is entirely dependent upon hearsay information.

Q. As a member of the committee, what was your information; that they were excluded or not excluded?—A. If you want hearsay testimony I can give it to you.

Q. I ask your information, as a member of that committee.—A. My information as a member of the committee was that soldiers were excluded from the inclosure.

Q. Was or was not that made the subject of investigation by the committee—the exclusion of the soldiers?—A. Not by the committee as a whole.

Q. By what part of it?—A. I don't know. My knowledge of that portion of this transaction has come to me since it passed, and at the time this investigation took place I knew nothing of it.

Q. Then the committee as a whole did not investigate this matter?—A. No, sir.

Q. Then the committee as a whole was not incensed at the posting up of that sign, "Soldiers and dogs not admitted?"—A. The committee was not incensed——

Q. Yes; as a whole.—A. There was no indignation on the part of the committee as a whole. A committee as a whole can not feel indignation. The individual members of it were naturally outraged.

Q. It was not the action of the committee as a whole?—A. Just how you get a committee as a whole indignant is a question. You can get the individuals indignant. All of us were indignant. At least I can say I was, and I presume the others were. You don't expect me to read the minds of my fellow members of the committee and tell you what they thought; at least I don't suppose you do.

Q. Only as expressed to you.—A. In other words, hearsay.

Q. We are entitled to the expressions of that committee.—A. I don't know as I heard expressions from each member of the committee. As a matter of fact, I can't now tell who those members were.

Q. Then your recollection about that is pretty indistinct?—A. As to the members of the committee, yes.

Q. When was this entertainment?—A. I could not tell you that.

Q. Then why are you so positive that everybody was invited that was there?—A. I have never stated that.

Q. We'll see what the record says.—A. Good.

Q. (Reading.) "Q. Were you on the committee of arrangements?—A. Yes, sir; there was a committee of reception or entertainment. Q. Was that a public affair, or were there invitations issued?—A. Verbal invitations were issued. Q. Do you know whether any instructions were given in regard to the admission or nonadmission of people?—A. Only by hearsay. As to any instructions being given, I did not give them myself, but we were allowing no one entrance into the open pavilion in which we were holding the little affair except those who had been invited. That is, they were supposed to be only the ones present."—A. They were supposed to be——

Q. You said with positiveness they were the only persons to be present.—A. No, sir; I did not state that; quote me correctly.

Q. Then you wish to have that part corrected?—A. No, sir; I do not; the statement stands exactly as I made it yesterday.

Q. And you don't know whether any soldiers were excluded or not?—A. Of my own knowledge, no.

Q. Do you know whether soldiers were excluded and Mexicans admitted?—A. Of my own knowledge, no.

Q. As a member of the committee, do you know?—A. As a member of the committee I learned of this as an individual.

Q. As an individual member of the committee, then, it was investigated by the committee or members of it?—A. By members of it, not by me. If you wish an explanation of that I can give it to you.

Q. I am willing to listen to any explanations you have got to make, and so is the court, I hope.—A. Only those who were invited were supposed to be present. As always is the case on a public occasion, when many people are present and there is a band, music, and refreshments, many parties not invited will force themselves in. There

might have been soldiers present; I can not state there were not. There might have been uninvited persons there other than soldiers; I can not state whether there were or not, but only those who were invited were supposed to be present, as I stated yesterday. Regarding this incident of the posting of a sign, "No soldiers or dogs allowed," I was informed at the time—since you are asking for hearsay, I will give it to you—that this sign was posted by two members of the company or battalion that was at Fort Brown at the time. One of your officers here in the post now knows more about that possibly than any other——

Q. Who is he?—A. Lieutenant Wait Johnson. You will understand that I do not wish you or the court to understand that Lieutenant Wait Johnson had a thing to do with the posting of that notice, but he overheard a conversation between some soldiers on the street and stated to me that he judged from this conversation that two of his men had posted that as a joke.

Q. When did he tell you that?—A. Yesterday. I don't remember whether he told me before or not, but I have received the same information in one way or another.

Q. You didn't know it until yesterday?—A. I don't know whether I did or not; I don't know it now. I state facts and you and the court draw your conclusions.

Q. I want to know how accurately; you state them once and the next morning you modify them.—A. You draw your own conclusions as to my accuracy.

Q. You did modify your statement about the members of the committee?—A. No, sir.

Q. I will leave that for the court, too.—A. You have called for this line of testimony, and I think it only right that I explain all I know in regard to it, in justice to myself and the other citizens of Brownsville.

Q. We were after the sentiment of the people of Brownsville in connection with the American soldiers and we expect to show it.—A. I grasp that. If you will only show it fairly we have no objections. We shall be only too glad to express it. I heard the night of this entertainment and during its progress that such a sign had been posted and I at once left the pavilion and walked out to the entrance; spoke to the policeman who was apparently on duty there and asked him if such a sign had been posted. He told me there was no sign of that kind up. I looked for it; there were posts on either side of the gate or entrance where I had been informed it had been posted; it was not up on these posts or anywhere else in sight, and the policeman informed me it was not posted at that time. I went out with the intention of removing it if it had been posted. In discovering it was not there I returned to the pavilion and thought nothing more of it until later on I understood certain members of our committee had called on the commanding officer to explain the occurrence. That's my connection with that transaction.

Q. Then you did know that certain members of your celebrated committee had called on the commanding officer? Did you or did you not?—A. I will not answer that question. I will answer it in my own way.

Q. You have just stated that they did.—A. I have stated that subsequently I understood that they did.

(At request of counsel witness' answer at bottom page 564 [271] was read over.)

Q. Now, you say you were informed at the time. What do you mean by that?—A. As to what?

Q. About the posting of that paper?—A. I don't know as I can make it any more clear. I was informed to the effect that that notice had been posted.

Q. By two soldiers?—A. No; simply that the notice had been posted.

Q. Will you swear positively that the policeman at the gate did not have instructions from a member of your committee, which was composed yesterday of five and this morning of seven—of an uncertain number, either five or seven—not to admit soldiers or Mexicans?—A. Your object in asking me to repeat and rehash I don't understand, but if you wish it I will say again that my knowledge of that is dependent upon hearsay.

Q. Did you have information, as a member of that committee, that such instructions had been given by a member of that committee to that policeman? Yes or no.—A. Instructions of what?

Q. To exclude soldiers and Mexicans. That is a simple question and we are entitled to the answer.—A. No; you are not.

By the counsel:

I will ask the court to instruct the witness. He is an attorney, skilled in the law. He knows what we are entitled to know, he knows that we are entitled to a categorical answer to that question, and we ask that he be instructed to answer it. It is perfectly clear to this court, or any court, that this is absolutely a hostile witness. We are entitled to get answers to any questions we put to him. He is evading every question put to him.

By the judge-advocate:

The witness has repeatedly explained to the court, as the court is aware, that he is testifying largely from hearsay, and for counsel to insist on this or any answers is manifestly unjust to the witness.

By the counsel:

Here is a report of the committee of which he is a member, of which he has testified he is an active member. He has testified himself that that committee went to the commanding officer of Fort Brown to investigate or straighten out this matter. I ask him whether or not as a member of that committee he had information whether this policeman at the gate, the agent of that committee to keep out his so-called uninvited guests, did have instructions from any member of that committee that Mexicans and soldiers were to be excluded, but he directly and distinctly evades it. Now, he knows whether he had such information as a member of that committee and we are entitled to his answer.

By the witness:

I will answer that yes or no if you will let me explain the answer.

By the counsel:

I ask that instructions be given to this witness to answer that question. We are entitled to a categorical answer from a hostile witness.

By the witness:

I will answer that question no.

(At request of counsel question was read over.)

Q. Did you have information, as a member of that committee, that soldiers were actually excluded from that entertainment? Yes or no.—A. Yes.

Q. Did you have information, as a member of that committee, that Mexicans were freely admitted?—A. No.

Q. You lived in Brownsville all your life, practically?—A. Practically; yes.

Q. You are familiar with the sentiment of the city?—A. I think so. With respect to what?

Q. With respect to the assignment of the Twenty-fifth Infantry there?—A. I think I can say yes.

Q. What sentiment was that?—A. At what time?

Q. From the time the order was issued on up to the time they arrived.—A. The sentiment of the town, I should say, was mixed. Some people seemed opposed to having negro troops there. Others, principally the older citizens who had been there during the service of negro troops at Fort Brown before, were not opposed.

Q. Wasn't there very general talk in opposition to their coming there?—A. Very general talk in opposition, no. It did not attract a great deal of comment.

Q. You are very sure of that, are you?—A. I am as sure as a man can be on a question of that kind; yes.

Q. Then—I want to get that clear—you repeat, then, that you are as sure as a man can be on any such question, that the general talk among the people there was not antagonistic to the assignment of the colored troops to Brownsville?—A. I believe this: That if the people had been given their choice that they would have preferred white troops, but they preferred negro troops to having no troops at all.

Q. You didn't hear any talk that they would be run out of town?—A. Absolutely no; that came to my knowledge; either hearsay or otherwise.

Q. That is necessarily hearsay when you are calling for the sentiment of the town?—A. Certainly.

Q. There were a number of negroes in the city, residents of the city, and had been for years?—A. There are about six negro men residents of the town and close about it.

Q. Quite a large Mexican community of the lower class?—A. Yes; a large percentage of the population is Mexican.

Q. As a matter of fact, you have a number of saloons in the town, don't you?—A. Yes, sir.

Q. Just prior to and about the time these colored troops were assigned station at Brownsville wasn't there more or less talk about excluding them from the saloons?—A. None that I heard. I heard no talk of that kind until after some of the saloons had arranged separate bars.

Q. Then some of them did arrange separate bars for the accommodation of colored troops?—A. One, to my knowledge.

Q. At least one. And wasn't there a sign posted in that one that colored men would apply to this other bar?—A. Not that I ever saw.

Q. You wouldn't swear there wasn't such a sign?—A. Oh, no; I think it very probable; there might have been, but I never saw it.

Q. As a matter of fact, did or did not these Mexicans you speak of, of the lower class, and the negroes of that town visit these saloons freely before that? I mean this saloon or saloons that put up the separate bar.—A. To answer that question would require an explanation. They did not. The Mexicans of the lower class and the

negroes of the town did not visit them freely. Of the negroes I think there were only 6 in town, negro men, and of those 6 I think there were 4 of them who did not drink at all; 3 of them, at all events, are very well known to me; decent, respectable negroes. The Mexicans of the lower class——

Q. You don't mean to say that decent, respectable people don't drink?—A. No; not by any means. I would not reflect on the counsel that way.

Q. That's all right; the counsel can take care of himself in that as in other things.—A. The Mexicans of the lower class, as a usual thing, can't afford to pay the prices that are charged for drinks in the better class of saloons, and as a consequence they frequent the beer joints and mescal joints that are common in the lower part of town; and consequently it was not common to see the lower class of Mexicans, nor was it at all common to see the negroes of the town in the saloons.

Q. Is that all the oratory you want to give us on that point?—A. I am here to give you what you want.

Q. I did not ask for oratory. I asked you whether there was any talk of excluding the negroes from the saloons until the colored troops were assigned down there.—A. I never heard any talk of excluding Mexicans at all.

Q. That's all I asked you. I ask you for a plain fact, and you go on and give us a long harangue on the subject. Your own feelings were very cordial to the people of the post, were they not?—A. To the officers of the post, yes; have always been.

Q. Wasn't there an officer in trouble down there at one time—Captain Baldwin—with one of your citizens?—A. Yes.

Q. Who prosecuted that case?—A. The county attorney and myself.

Q. Did or did not you offer your services as a counsel freely to the party who was complainant in this matter?—A. You understand I might claim the question of privilege on that, as you claim to be an attorney and ought to know, but I am willing to waive it and state I did.

Q. Did you or did you not say something to this effect: That it was about time that some of those snobs, or snobbish people—those officers down there—were called down a bit, referring to the officers?—A. If anyone ever stated that to you, he stated a deliberate, malicious falsehood.

Q. You did not say it, then?—A. I did not.

Q. You seem to be emphatic on that point.—A. I am.

Q. You didn't have any animus toward Captain Baldwin, or any of the officers at that time, or any time?—A. To say animus, no. I thought Captain Baldwin should be punished on that occasion, and for that reason offered my services. He struck an old soldier 70 or 80 years of age, broke his teeth, and knocked him down.

Q. The court did not agree with you?—A. I don't know what the court did; the jury did not.

Q. And it was a jury of your peers in Brownsville—citizens there?—A. Yes.

Q. And in spite of all the rhetoric and oratory that you and Mr. Kleiber could produce, they returned a verdict of not guilty?—A. Look at your record. I said nothing about Mr. Kleiber. The jury returned a verdict of not guilty; yes.

Q. In spite of all your oratory?—A. Yes.

Q. That's what we want; the truth.—A. That's what we will give you.

Q. Mr. Creager, is your father living?—A. Yes, sir; he is.

Q. And your mother?—A. Also.

Q. Together?—A. Yes, sir.

Q. They have never lived apart, eh?

To this question the judge-advocate objected as follows:

I object to that question. I think it is the duty of the court to protect the witness. If the witness is willing to answer it, I have no further objection.

(Witness said he was willing to answer the question.)

By the counsel for accused:

I did not mean there was anything wrong in this man's record.

By the witness:

I would not advise you to insinuate anything of the kind. You are positively insulting in your methods.

By the counsel:

I am sorry to hear that; I did not mean to be insulting.

By the witness:

But results and your intentions differ.

By the associate counsel:

I object to the witness indulging in any conversation with counsel for the accused, except direct answers to his questions. I don't think it proper; I don't think it should be done.

By the witness:

I should like to answer that question before the court is closed.

The accused, his counsels, the reporter, the witness, and the judge-advocate then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce that the court instructs counsel that in the examination of witnesses they will refrain from any undignified remarks or reflections upon the manner or method of witnesses in giving their testimony. The court has already, on several occasions, stated that the widest latitude will be allowed in cross-examination, but this does not authorize any undignified remarks by counsel reflecting on the manner of expressions of the witnesses. If counsel believes that a witness is hostile he can show it in a becoming manner, without insinuations or inuendos.

By the counsel for the accused:

May it please the court, the counsel will, in so far as practicable, conform to the expressed directions of the court, but wishes to call the court's attention to the fact that there was no inuendo—that there was a statement direct to the court that this witness was clearly hostile, and I insist that is within the prerogative. I wish to say to this court that in asking this first question about this witness's family his answer surprised me. The first time I ever knew who the witness was or what his name was was on yesterday afternoon when he was introduced to this court. Naturally, in the proper performance of my duties as counsel, it was my business to inquire who is it. Naturally, it was my business and my prerogative to show this court who he was. I was informed that his mother was a widow, and frankly, when I asked that question this morning and he said no, I would naturally proceed to find out what his exact situation was, and had the witness not been so hostile, in my honest opinion, he would not have considered this a reflection in any way; and my purpose was to go on and show to this court how this man went through college, and clearly I have a right, when the man on the witness stand interjects his college life, to go into it, and I have a right, and I insist on that right, may it please the court, to lay a foundation for that.

In view of this explanation as to my purpose, and in order that this witness may disabuse the court's mind of any impression formulated as to his family, I distinctly request he be allowed to go on and answer that question. I confess that with the information I had I was surprised when he said his father and mother had been living together—I understood his mother was a widow.

(At request of the court the question was repeated.)

By the judge-advocate:

We have no objection whatsoever on the part of the prosecution to the answer to this question, nothing to conceal, but we do insist it is immaterial to the issue.

By the counsel for accused:

I only ask it now because it was objected to and because the witness requested permission of the court to answer it. I don't know who the witness is nor what he is, but with this information, as I say, I had a right to go into it and let you know who he was.

By a member of the court:

I object to the question being answered on the grounds given by the judge-advocate, that it is immaterial.

By the counsel for accused:

I am willing to withdraw it; I only asked that he be allowed to answer it because he asked permission to answer it. I ask it for two reasons—first, that the man be allowed to answer it because he asked to answer it; second, because there seems to be an impression in the minds of some that there is some hidden purpose in it. I simply wanted him to straighten out his record.

By the judge-advocate:

The witness has requested me to state to the court that he asked permission to answer the question, but if the court insists upon a ruling as to its immateriality that is a different question. But he would like the answer to be made of record. He asks that permission of the court.

By a member of the court:

I object to the witness being allowed to answer the question.

The accused, his counsels, the reporter, the witness, and the judge-advocate then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce the decision that the objection to the question as being irrelevant is sustained. The question will not be answered.

The court then took a recess until 2 o'clock p. m.; at which hour the members of the court, the judge-advocate, the accused, his counsel, and the reporter resumed their seats.

The cross-examination of the witness, R. B. CREAGER, was continued by counsel for the accused.

Q. How far is Point Isabel from Brownsville?—A. Twenty-two miles.

Q. And you were living down there with your family, I understand, on the 13th of last August?—A. Temporarily.

Q. When had you gone down there and how long did you remain, as near as you can tell us?—A. Do you mean with my family?

(The reporter was requested to read the previous question.)

A. I went down the night of the 13th—the afternoon of the 13th—and came back the morning of the 14th.

Q. How long had you lived down there?—A. I moved to the Point in June and stayed until about the 1st of September. I don't remember the exact date on which I went down or came back.

Q. You went down daily and back the following day to business?—A. Usually; not daily.

Q. Did you go back to business on Sundays?—A. Very seldom.

Q. What time did your train leave Brownsville for Isabel and how long did it take you to get to that point?—A. Left at 5 o'clock in the afternoon and would get down usually in from an hour and a quarter to an hour and a half.

Q. What time did it get you into Brownsville in the morning?—A. Usually at about 8 o'clock.

Q. Leaving Point Isabel at what time?—A. 6.30, my recollection is.

Q. Did you as a rule remain down at Point Isabel on Sundays?—A. As a rule, yes.

Q. What day of the week was it that you had this conversation with Mr. Tate?—A. That I can't tell you; my recollection is that it was, as I have before explained, the morning of the day on which the shooting occurred.

Q. What is your best recollection as to the day of the week.—A. I have none.

Q. Where were you when Mr. Tate met you for this conversation?—

A. I think in front of the Federal building. I will not be positive as to that, but I think in front of the Federal building in Brownsville.

Q. And you held the conversation—all of it—at that point?—A. That is my recollection; all the conversation we had at that time. We talked over the matter subsequently.

Q. Did you have any further conversation than this one before talking to Major Penrose, this accused?—A. To the best of my recollection, no.

Q. What is your best recollection as to the exact hour when you met him there in front of the Federal building?—A. I can't give you the exact hour; to the best of my recollection, between 8 and 9 o'clock in the morning.

Q. Was it nearer 8 or 9?—A. I can not tell you.

Q. Why is it you can't recollect that as nearly as you can the hour of your conversation with Major Penrose?—A. I can.

Q. How long, approximately, was it after you left the depot—how long would it take you, in other words, to go from the depot up to the Federal building?—A. I invariably drove up in a hack, and it would take only a few minutes.

Q. Well?—A. From five to ten minutes.

Q. So that if your train was on time it must have been at least from five to ten minutes after 8?—A. It was certainly not longer than that.

Q. Is your office in the Federal building?—A. No, sir; I have an office there, to which I referred in my testimony.

Q. Where is your office to which you referred in your testimony?—A. By the Yturria Bank, of Brownsville.

Q. Where is that?—A. Between Thirteenth and Elizabeth streets.

Q. Had you been up to your office in the Federal building when you met Mr. Tate?—A. I had not.

Q. You are positive about that?—A. I think I had not.

Q. Had you been up to your other office?—A. I am not positive, but I think not.

Q. Did you get out of the hack and meet him almost immediately

after that?—A. I can't answer that question, because I don't remember.

Q. How long did your conversation with Mr. Tate last, more or less? Give us your best recollection.—A. To the best of my recollection, between five and twenty minutes.

Q. Was it twenty minutes?—A. I don't know.

Q. Was it fifteen minutes?—A. I don't know.

Q. What is your best judgment? Was it as much as fifteen minutes?—A. I have given you the best answer I can to the question; it was between five and twenty minutes, I should judge.

Q. Did you go into all the details of the thing with him?—A. I don't remember whether I went into all the details or not.

Q. Tell us how much of the details he told you.—A. I can remember distinctly his telling me of the fact. First, my recollection is, he told me something to the effect that he was in trouble, and then related his experience that he had, prefacing his remarks, to the best of my recollection, by the statement that charges had been preferred against him, or Major Penrose had written to Colonel Vann with reference to the matter, and that he did not wish to get Colonel Vann in any difficulty over the matter, and that rather than put him in an embarrassing position he would resign, and then he went on to describe the occurrence. Do you wish me to describe that?

Q. Describe the entire occurrence.—A. As I told you a moment ago, I don't know how minutely he described it; he certainly gave me a pretty good outline of it.

Q. Did he tell you the ladies present?—A. He named them all, to the best of my recollection.

Q. Did you listen to him deliberately?—A. Oh, yes.

Q. You endeavored to get all the details?—A. I asked him a number of questions with reference to it so as to familiarize myself with the particulars, which a man naturally would on an occasion of that kind.

Q. As an attorney would, for instance?—A. As an attorney would, or an individual.

Q. Was your interview with him with the expectation that you were going to present it to the commanding officer or not?—A. My recollection is that he started the conversation not by asking me to go up there——

Assistant counsel for the accused made the following objection:

May it please the court, we request that the witness be directed to answer the question that is asked him without any explanation, unless it be an explanation that he desires of the question itself.

(The reporter was requested to read the question.)

That is the question, and it admits of a very simple and direct reply, and I request the ruling of the court that the witness be instructed to answer the question without any surplus verbiage.

A. During the latter part of the conversation, yes. I can not answer that question by yes or no.

Assistant counsel for the accused:

I respectfully ask the ruling of the court on that.

To which the judge-advocate replied:

I, too, would like to have the ruling of the court. It is not possible to answer every question categorically. He perhaps had no well-formed intention or idea in his mind

at the time whether he was going before Major Penrose or not; he wanted to hear the facts, and if the facts didn't warrant him to go before Major Penrose he would not go, and I also would request a ruling of the court.

Assistant counsel for the accused:

May it please the court, the record is here and may be referred to as to whether or not he did thus answer the question yesterday.

The judge-advocate:

If it is merely a matter of record, then a great many of the questions of the counsel to-day are immaterial and burdening the record, because they have been asked by the counsel for the accused; nothing has been said by the prosecution.

Counsel for the accused:

May it please the court, the counsel has been instructed carefully as to what he shall do. This question is that this witness has made a positive statement in his direct examination as to why Mr. Tate came to him and stated that specifically and in pursuance of that he went there. Now, we maintain that this question we have asked calls for a direct reply. We didn't say a single word about categorical answers; we have simply thought his answer ought to be directed directly to this question, no more nor no less, and we ask the court to instruct the witness, and we again repeat it, that it is our desire for the court to instruct the witness to answer the question: in other words, that his answer be responsive and not filled with explanatory remarks.

The judge-advocate:

May it please the court, if that is all the counsel wishes I think the answer has already been made to the question.

Counsel for the accused:

May it please the court, we are not asking for an answer; we are asking for certain instructions to the witness, and we desire that the instructions be given.

(By direction of the court the reporter read the following question and two answers: "Q. Was your interview with him with the expectation that you were going to present it to the commanding officer or not?—A. My recollection is that he started the conversation not by asking me to go up there——A. During the latter part of the conversation, yes. I can not answer that question by yes or no.")

The accused, his counsel, the reporter, and judge-advocate withdrew and the court was closed, and, on being opened, the president announced, in their presence, that the court does not at this time see the necessity of giving the witness any instructions as to the manner of answering questions.

Q. Then you did not until the latter part of that interview have in your mind visiting Major Penrose in regard to it?—A. I don't remember at what time during the conversation my decision was formed, but it was some time after the beginning of the conversation.

Q. And you are sure this conversation didn't last over twenty minutes?—A. Not absolutely positive; no.

Q. It might have lasted more than twenty minutes?—A. Possibly.

Q. Might it have lasted thirty minutes?—A. Possibly.

Q. Might it have lasted more than that?—A. Conceivably.

Q. Is your best recollection that it did or did not last forty minutes?—A. I have given you my best recollection about five times. I have said between five and twenty minutes.

Q. Will you tell me in this connection what you meant by this statement to the court in the direct examination: "He hunted me up and met me on the street, my recollection is, and told me that he was in trouble, and that he understood charges had been preferred

against him with his chief, the collector of customs, Mr. Vann, and requested me to look into the matter for him." Was that the first part of the interview or not—you so stated in the direct examination?—A. I attempted to give you in those few words the substance of the whole conversation. I meant by that just exactly what the words say.

Q. Was that the first thing that he told you in that connection?—A. I don't remember what his first words were.

Q. Did he or did he not tell you substantially what you have stated there when he first found you when he was hunting you up?—A. Not in one burst of confidence or anything of that kind. During the course of the conversation, yes.

Q. About what time was it when this conversation was finished, as near as you can recollect?—A. I have answered that question to the best of my ability; it was sometime, I judge, between 8 and 9 o'clock, or possibly a little after 9.

Q. Where did you go to from there?—A. I don't remember.

Q. Did you go to your office before you went down to see Major Penrose? That morning, I mean.—A. I am not positive, but I think I did.

Q. About how long did you stay in your office?—A. I don't know. I don't know that I went to my office.

Q. What is your best recollection; did you or did you not go to one of your offices after that conversation?—A. I have just stated that I think I went to my private office.

Q. What is your best recollection as to the time you remained in it?—A. I have none.

Q. You have no recollection at all about it?—A. My reason tells me that if I went there at all it could not be but for a short time, since I am sure I called upon Major Penrose between 10 and 11 o'clock, my best recollection.

Q. Did Mr. Lon Evans—I think you gave his name—see you in your office that morning?—A. I don't remember where I met Evans; I am not positive whether it was in my office or not, or whether it was in the street. My recollection is that he also come to me on the street.

Q. Whereabouts?—A. I don't remember that.

Q. Was it before or after you went up to your office?—A. I don't know. I don't know that I went up to my office.

Q. Did Mr. Tate tell you of Mr. Evans's trouble—what it was?—A. To the best of my recollection Mr. Tate told me that Mr. Evans was looking for me; I can't be positive; it might have been vice versa, that Evans told me Tate was looking for me, but I am not positive. I am positive one of the men told me the other was looking for me.

Q. I will read to you your direct examination on that: "Q. Now, you learned it on this morning?—A. Yes, sir; and Tate informed me that Evans desired to see me in reference to his matter; in other words, he had seen Evans looking for me and inquiring for me." Is that correct or not?—A. I think so; to the best of my recollection, it is.

Q. But you have just stated, as I recall it, that you are not certain whether Evans told you Tate was looking for you or the reverse.—A. Not absolutely positive. I am giving you the benefit of my best recollection; that is all I can do.

at the time whether he was going before Major Penrose or not; he wanted to hear the facts, and if the facts didn't warrant him to go before Major Penrose he would not go, and I also would request a ruling of the court.

Assistant counsel for the accused:

May it please the court, the record is here and may be referred to as to whether or not he did thus answer the question yesterday.

The judge-advocate:

If it is merely a matter of record, then a great many of the questions of the counsel to-day are immaterial and burdening the record, because they have been asked by the counsel for the accused; nothing has been said by the prosecution.

Counsel for the accused:

May it please the court, the counsel has been instructed carefully as to what he shall do. This question is that this witness has made a positive statement in his direct examination as to why Mr. Tate came to him and stated that specifically and in pursuance of that he went there. Now, we maintain that this question we have asked calls for a direct reply. We didn't say a single word about categorical answers; we have simply thought his answer ought to be directed directly to this question, no more nor no less, and we ask the court to instruct the witness, and we again repeat it, that it is our desire for the court to instruct the witness to answer the question: in other words, that his answer be responsive and not filled with explanatory remarks.

The judge-advocate:

May it please the court, if that is all the counsel wishes I think the answer has already been made to the question.

Counsel for the accused:

May it please the court, we are not asking for an answer; we are asking for certain instructions to the witness, and we desire that the instructions be given.

(By direction of the court the reporter read the following question and two answers: "Q. Was your interview with him with the expectation that you were going to present it to the commanding officer or not?—A. My recollection is that he started the conversation not by asking me to go up there——A. During the latter part of the conversation, yes. I can not answer that question by yes or no.")

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Q. But you have just stated, as I recall it, that you are not certain whether Evans told you Tate was looking for you or the reverse.—A. Not absolutely positive. I am giving you the benefit of my best recollection; that is all I can do.

Q. Can you recall any conversation about Mr. Evans that you had with Mr. Tate that morning further than that he was looking for you?—A. My recollection on that point is very vague; I can not be sure.

Q. And you don't know where you saw Mr. Evans that morning?—A. No, sir.

Q. And you don't know whether Mr. Tate had a conversation with you about Mr. Evans or not?—A. My recollection is, he did; I am not absolutely positive.

Q. Further than you have testified to here, I mean?—A. Yes, sir.

Q. Is there anything else that you can recall that you did that morning from the time you arrived at 8 o'clock until you called on Major Penrose?—A. I engaged a hack to take me up to the post.

Q. That morning?—A. That morning.

Q. Anything else?—A. I went up to the post.

Q. I said between the time that you landed there at 8 o'clock and the time that you took the hack and went up to the post that morning. Can you give this court anything else that you did that morning?—A. Nothing else material.

Counsel for the accused:

I will repeat the question and I ask the court for a direct answer without going into his opinion whether material or not.

A. I breathed and expectorated and walked and moved my hands and arms.

Q. Aside from these natural functions of the body, did you have any further conversation with any other people or did you perform any business between the time that you landed there at 8 o'clock and the time you went to Major Penrose's office?—A. Not within my recollection now.

Q. Did you investigate this Tate matter before you went up to see Major Penrose further than hearing this man's own statement?—A. No further that I can now recall.

Q. Then when you said in your direct evidence that you did investigate it, your investigation was limited to hearing Mr. Tate's own story?—A. Yes, sir; he gave me the names of witnesses, etc., but I don't think I discussed his matter with anyone else. I will not be positive about that, Colonel, but I don't recall discussing it with anyone else.

Q. You did state that you investigated it and, as I understand you, your investigation was limited to hearing Tate's own story.—A. Want me to answer it again?

(The reporter was requested by counsel for the accused to read the previous question.)

A. That is a statement on your part. If you wish me to understand it as a question——

Q. Put it in the form of a question? Is that correct?—A. Substantially so.

Q. Do you wish to modify it in any way?—A. No.

Q. Now tell this court who told you the Evans story before you went up there to see Major Penrose on this morning that you say was the 13th of August, 1906.—A. I think Tate did, and also Evans did I am positive, and it is possible that other people conversed with me about both the cases, as I have before stated, but I recall no one else except these two.

Q. Whereabouts? You say you are positive that Evans did. Whereabouts did Evans tell you his story of which you are so positive?—A. To the contrary, I am not very positive. I don't recall, as I have before stated, where this conversation took place.

(The reporter was requested by counsel for the accused to read the second preceding answer, as follows: "A. I think Tate did, and also Evans did I am positive, and it is possible that other people conversed with me about both the cases, as I have before stated, but I recall no one else except these two.")

Q. It now appearing of record and having been read that you did state that you are positive you listened to a statement from Evans about his trouble before visiting Major Penrose that morning, I again request an answer to my question, Whereabouts was this conversation held?—A. As I have before stated a number of times, I don't know.

Q. What was the conversation?—A. I can give you only a general outline, and do not attempt to repeat his exact language or mine. He told me that his wife had the night before been assaulted by a negro soldier, who had grasped her by the hair and thrown her to the ground; that she had screamed, and a neighbor who was at the time taking a bath and was half dressed ran out on his porch, I believe, at all events, rushed out of his house; thereupon, I think he said, jumped the fence and fled. He also told me, to the best of my recollection, that Mrs. Evans could identify the man only as being a tall or large negro in uniform.

Q. Is that all?—A. No. He then requested my assistance—I don't remember in what form—and I remember advising him to call upon Major Penrose, state the case to him, and demand that he use such means as he could to discover the culprit, telling him at the same time that I considered it extremely improbable that Major Penrose should be able to discover the guilty party on account of the meagerness of the description he was able to give of the culprit. I told him I would go up with him to see Major Penrose, but for some reason which I do not now recall I could not go with him at that time, or did not go with him at that time. I don't remember whether he said he couldn't go with me or I couldn't go with him; at all events, we didn't go at that time. He left me or I left him, and shortly after this conversation I paid my call on Major Penrose.

Q. How long after this conversation was it that you paid your call on Major Penrose?—A. I don't remember.

Q. Can you give the court any sort of idea how long it was after this conversation before you visited Major Penrose?—A. Between ten minutes and two hours, roughly.

Q. That is as near as you will come to stating the time, is it?—A. Yes, sir.

Q. Did you see Mr. Evans again that day in regard to this matter?—A. My recollection is no, but I am not positive as to this.

Q. Your best recollection is that you did not?—A. I do not now recall a subsequent conversation with him on that day.

Q. Do you recall having given to him at any time the result of your interview with Major Penrose on this subject?—A. I can't be positive, but I think so.

Q. Tell the court, as nearly as you can recall it, when you so told Mr. Evans and where.—A. Where, I do not know; when, I do not

know than that, if at all, subsequent to my call upon Major Penrose and within the next four or five or six days.

Q. What did you tell him that Major Penrose had said?—A. I don't remember the nature of this subsequent conversation with Evans, nor am I positive that it took place.

Q. Are you in the habit, as counsel, when you go up to perform a function for a client or a friend to fail to tell him the result of your labors?

To this question the judge-advocate made the following objection:

May it please the court, the witness has already stated on the direct examination that he was not employed as counsel but as a friend, and I think the question is out of order.

(The reporter was requested to read the next preceding question.)

To which counsel for the accused replied:

We have no reply to make to the objection. I am perfectly willing to reform the question so as to save time.

Q. You are an attorney?—A. Yes, sir.

Q. And you do practice?—A. Yes, sir.

Q. And you do sometimes practice without a fee?—A. Oh, yes; frequently.

Q. You did in the case against Captain Baldwin; your services were gratuitous?—A. As I have before told you, yes.

Q. You stated that in this case you went up as a friend for a friend who had consulted you, did you not?—A. Yes, sir. Evans was not especially a friend of mine at that time. He was an acquaintance, and I suppose we would have been considered friends. I would have done the same thing for any other citizen who might have come to me.

Q. Is it your practice when asked to perform a function of this kind to neglect to advise the friend as to the result of your intervention?—A. It is rarely when a case of this kind comes up; I don't recall a similar instance. It is customary, certainly, to report the next time you meet the man for whom you did the favor if you wish the custom.

Q. I asked your practice.—A. If anything decisive had resulted from the interview I suppose I would have hunted Evans up and notified him. As nothing decisive happened I didn't think it necessary to hunt him up.

Q. What did Major Penrose say when you told him about this?—A. I don't recall his language, but substantially he expressed doubt as to its having been one of his men that committed the assault, and said in substance that some other person could have blackened their faces and could have worn a uniform.

Q. You have stated in substance that you advised him to keep his men out of town on account of this. What reply did he make to you in that regard?—A. To the best of my recollection, he agreed with me, and I think stated that he had already issued orders to that effect. I won't be positive, but I think that that passed.

Q. Is that your best recollection?—A. My best recollection, yes.

Q. That he told you at that time that he had already given orders to that effect?—A. That is my best recollection, yes; to keep them out of town at night.

Q. Do you remember having received a telephone message on the morning of the 13th that Major Penrose wanted to see you?—A. No, sir.

Q. What officers were present in Major Penrose's office when you called on him that day, the 13th?—A. That I can't be positive.

Q. You have stated that there were two or three officers present; please state to the court who they were?—A. I don't remember.

Q. Do you know the commissioned officers that were there at that time—any of them?—A. I met that morning for the first time Major Penrose and these two or three officers that were in his office and to whom he introduced me. I don't recall meeting any of those officers again while they were in town, but I suppose I must have done so.

Q. You are very sure that there were two or three officers present when you called that morning?—A. Yes, sir.

Q. And that they were officers of Major Penrose's command—commissioned officers?—A. I supposed them to be commissioned officers.

Q. As a matter of fact, don't you know a commissioned officer from a private or noncommissioned officer?—A. Only by their clothes usually.

Q. Well, you intended this court to understand that those were commissioned officers, did you not?—A. Yes, sir.

Q. They were in Major Penrose's own office?—A. I think it was his office. It was the one in which he was commonly found, in the administration building.

Q. What kind of clothes did you have on that day, Mr. Creager?

To this question the judge-advocate objected as follows:

I object to the question as being immaterial.

A. I can't answer; I don't remember.

To which the assistant counsel for the accused replied:

The defense replies that the question is material in that it will serve to identify, on the part of other persons who were there and supposed to be present at this conversation, their connection with this affair, and will tend to show their acquaintance with the details of that conversation and their recollection positively as opposed to the doubtful recollection of this witness. It is material in connection with the recollection of other witnesses.

The judge-advocate:

We call for the ruling of the court.

The accused, his counsel, the reporter, and the judge-advocate withdrew and the court was closed, and, on being opened, the president announced, in their presence, that he was instructed to announce that the decision of the court was that the objection of the judge-advocate be not sustained; that the question be answered.

A. I do not remember.

(At this point the reporter was requested by the assistant counsel for the accused to read the first 10 questions of the cross-examination of the present witness during the afternoon session, which was done without being here copied in the record.)

Q. You can recall nothing about any part of the apparel you wore that day—its color or what kind of a hat, or anything of the kind?—A. No; I have no idea. It might have been a light suit or black one; a felt hat or straw.

Q. You have no recollection on the point at all?—A. No, sir.

Q. Now, how long did this conversation that you had with Major Penrose on the 13th last? My recollection is in your direct evidence

know than that, if at all, subsequent to my call upon Major Penrose and within the next four or five or six days.

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Q. You have no recollection on the point at all?—A. No, sir.

Q. Now, how long did this conversation that you had with Major Penrose on the 13th last? My recollection is in your direct evidence

you said about three-quarters of an hour.—A. You understand, when you ask a question of that kind a man can only approximate it, and I should judge half an hour, or possibly three-quarters. I will not be sure on that point.

Q. Did these two or three commissioned officers who were introduced to you remain during this entire conversation?—A. My recollection is that one of them came into the room after the major and myself took our seats. I don't remember how long after, but that is my recollection, and that thereupon this newcomer was introduced to me. I think that he left while we were conversing, and possibly one of the others. I don't remember any further than that.

Q. Is it your best recollection that one or two of them remained during the entire conversation?—A. I think one of them, the one who was seated at the desk to the right of the door as you come into that room. My recollection is that he remained at the desk during the whole of our conversation. As to the other two, I am not positive as to whether they remained or left.

Q. In your direct examination in answer to the question—in that part of it in regard to the evidence in the Tate matter—you answered, "I mentioned the fact to him that I was certain that some feeling had apparently arisen between the town people and the members of the command, and he said that, yes, he regretted it also, and this led up to a discussion of these two points upon which I had really called to see him about." What two points did you refer to?—A. The Tate matter and the Evans matter.

Q. You are sure that you mentioned that to him at the time, or did you?—A. That I mentioned what?

Q. Both matters at that time?—A. Yes; I am sure we conversed about both matters.

Q. That was on the 13th?—A. To the best of my recollection, yes; without going into that at such length.

Q. Now, what was it that you said to him about the practice in regard to the negroes on the sidewalk in Brownsville?—A. Nothing with reference to the practice in Brownsville.

Q. You said something about it?—A. I replied that theoretically that was unquestionably true, but that certainly as long as he was in the South, and in substance, that his statement that his troops had as much right on the sidewalks of Brownsville as any of the citizens of the town was correct, but that as long as they were in the South, certainly they would find that when a negro and a white person met on the sidewalk the negro would be expected to make way.

Q. Do you mean to say by that that the negro must get off the sidewalk whether he is in uniform or not?—A. By no means.

Q. Tell us what you do mean.—A. It strikes me that I can hardly amplify it, that if a negro and white man met coming down the sidewalk, the negro is usually expected to make way. You understand that both men can not keep in a straight line; when they meet one has to step aside, and it is usual and customary in the South for the negro to make way.

Q. You did use the expression that "the negro would have to step aside." I would like for you to explain what you meant by that.—A. Just exactly what I have finished explaining. I will go over it again if you wish it.

Q. Did you report to Mr. Tate the result of your interview that day?—A. I did not report to him; no. I had a conversation with him, but I don't recall whether it was that same day or the next day, but very shortly thereafter we had another conversation about the matter, and I told him the results of my interview with Penrose, which were nil.

Q. What is your best recollection as to the time you had this subsequent interview with him?—A. I can give you none.

Q. Can you tell where it was?—A. No, sir.

Q. Was it in your office?—A. I have just stated I can not tell you where it was.

Q. And you can't even approximate the time?—A. Yes, sir; I can approximate it. It was within the next day or two, possibly the same day.

Q. Well, is it your best recollection that it was the same day?—A. I don't know.

Counsel for the accused:

May it please the court, I think we are entitled to the witness's best recollection on that.

A. I have given my best recollection.

The judge-advocate:

And has so stated it at the time of the answer.

Counsel for the accused:

I again ask that the witness be instructed to give his best recollection as to whether this was or was not that same day.

A. If the court should instruct me I should have to disobey it; I should have to say I do not know.

The court:

What is the answer?

A. I don't know whether it was the same day or not; it was shortly after the interview, and whether it was the same day or a subsequent day I do not know, and it would be utterly impossible for me to be more accurate than I am.

Q. You did have a subsequent interview with Major Penrose?—A. Subsequent to what?

Q. To this one on the 13th that I have talked about?—A. Yes, sir.

Q. And that was when?—A. The morning of the 14th.

Q. If it is a fact that the 12th of August, 1906, was Sunday, did you or did you not come back to your office that day?—A. On the 12th, I don't remember. The probabilities are that I did not, as it was not customary for me to come back on Sunday, but I have no recollection as to any particular Sunday.

Q. Now, you stated in reply to the question whether you had two interviews, once at least, that you won't be positive whether one occurred on the 13th and the other on the 14th or not, and you gave some reasons why you thought it was on the 13th, and this morning you repeated it. You are still positive that it was on the morning of the 13th that you told Major Penrose about Mrs. Evans?—A. No, sir.

Q. It might have been on the 14th when you first mentioned the subject to Major Penrose?—A. My recollection is that I said I was

morally certain that it was the morning of the 13th, and I will give them again if you wish.

Q. It might have been on the morning of the 14th?—A. You say it might.

Q. I asked you if it might have been on the morning of the 14th when you first mentioned the Evans matter to Major Penrose?—A. It might have been, but it wasn't; I am morally certain as I can be of anything that it was not.

Q. You say: "I had two conversations with Major Penrose—one before and one after the shooting. I told him that on account of the feeling that existed between the soldiers and town people, which feeling was very apparent, it would be advisable for him not to permit his men to visit town that night."—A. No, I don't think I said that night.

The judge-advocate:

The record will bear out the witness.

Q. I said that night, it should be at night. What feeling did you refer to?—A. I referred to the feeling that existed on account of this assault on Mrs. Evans that had possibly aroused more people among the townspeople than any one thing at that time.

Q. You are quite positive now that it was on the morning of the 13th—you are morally certain it was on the morning of the 13th?—A. Yes, sir; that is my recollection.

Q. Now, how many people had given you that impression that morning? How many people of the town had you talked to?—A. I answered that a few minutes ago. I don't remember. I can not place any individuals that morning, except Tate and Evans. There might have been others, as I have before stated, but I can not remember who the individuals were, if there were any.

Q. How did you acquire this knowledge of the feeling which was apparent?—A. Well, from Evans and from Tate. There were lots of people gathered on the corner and were discussing the matter.

Q. You now remember that you heard people on the corners discussing this on the morning of the 13th before you saw Major Penrose?—A. I don't remember any of the conversations I overheard, but I am positive that there were groups of people discussing it. Anyone passing could hear enough to gather what they were talking about.

Q. Can you tell us any particular corners where people were assembled discussing this thing?—A. No, I don't know that I can.

Q. Can you tell any particular group of citizens of Brownsville that were discussing it in that way before you visited Major Penrose?—A. I don't believe I can after this passage of time.

Q. You are not certain that was before you visited Major Penrose that morning?—A. Not absolutely.

Q. Might not this feeling that you say was apparent, might it not have been apparent on the morning of the 14th instead of the morning of the 13th, as you have stated here?—A. Feeling would hardly be the word to express it the morning of the 14th. There was intense excitement the morning of the 14th.

Q. Then you do differentiate in your mind between the feeling that existed between the soldiers and townpeople on the morning of the 13th that prompted you to warn Major Penrose to keep them off the

streets than the feeling that existed the next morning?—A. There is not a question but a different feeling existed the next morning.

Q. But you did say that on the morning of the 13th the feeling was such that any man passing along the street would take notice of it?—A. Yes, sir; any man that had knowledge of the people and what occurred.

Q. And as such and as a citizen you were impelled to advise Major Penrose to keep his men off the street?—A. Yes, sir.

Q. Did Major Penrose resent your advice?—A. Not at all.

Q. Did he seem grateful for it?—A. Well, he wasn't demonstrative at all.

Q. You stated in answer to the question, "Go ahead," "My idea being, not in contemplation of any act such as subsequently occurred, or occurred the night of the 13th, but in contemplation of personal difficulties between members of his command and the townpeople, if the negroes got out and visited the different joints, such as soldiers usually visit, and got to drinking. It was, I considered, almost sure to result in personal difficulties, since the feeling was as high as it was, and I advised him not to permit the men to leave the post and go into Brownsville at night." Now, I will ask you if the feeling of antagonism of the people of Brownsville was so intense on the morning of the 13th that you were warranted in warning him against such feeling?—A. It was not alone the feeling on the part of the people, but what had occurred; and no man of reasonable mind could assume what was the feeling on the part of the soldiers, and a clash would be liable to occur under such circumstances.

Q. I wish to repeat again, do you mean what you say in this answer, that the feeling of antagonism of the people of Brownsville on the morning of the 13th, by reason of the Evans and Tate incidents, which you were going to see Major Penrose about, were so apparent as a man walking along the street as you were, would feel impelled to warn Major Penrose to keep his men off the street?

Counsel for the accused:

I ask that the witness be instructed to give us a categorical answer. We submit that this is exceedingly important in this case, and that this witness has no right to evade what he has said in direct examination. The evidence is read to him exactly as it is, and as stated this morning; and we repeat it, that this witness is an antagonistic witness, and naturally, under such circumstances, we are entitled to know what he meant.

A. Read the answer and I will repeat it to the word.

Counsel for the accused:

We wish a categorical answer.

A. If he will read my former answer, I will tell him whether or not I can answer categorically.

The court:

I don't think the witness caught the meaning of the question.

Counsel for the accused:

The question is, "Go ahead."—"A. My idea being not in contemplation——"

A. You will notice I don't say the feeling on the part of the townspeople—I said the feeling.

Q. Did you refer, when you said the feeling, to the feeling on the part of the enlisted men of that command?—A. I referred to what I

supposed—it was largely an assumption on my part that there was feeling on both sides.

Q. Had you at any time previous to that come in contact with any officers or enlisted men in that command in such a way that you could predicate an opinion as to the feeling of the enlisted men?—A. Personal contact; no.

Q. Had you any right to advise Major Penrose, then, from any information you had about his own men?—A. Yes, sir.

Q. What acts of the command did you have in mind at the time you formulated that advice and gave it to Major Penrose?—A. I had in mind the insolent behavior with reference to those ladies, into whose midst they roughly pressed their way. I had in mind their conduct, as reported to me—you will understand this is hearsay, my opinion is predicated upon it—of men passing in front of various houses and cursing, using bad language. I had heard citizens of the town speak of that. I recall one, who is here at Fort Sam Houston, Mr. Dennett, and knew generally the reputation, the general reputation, of that command in Brownsville at that time was not good. It was far different from the soldiers who preceded them and the other negro troops who had been there formerly.

Q. Then I understand the information that reached you, such as you have narrated it, was solely on that account that you advised Major Penrose to keep his men out of town?—A. Solely on that account and those acts that had come to my personal knowledge, which I knew, as any reasonable man would know, it would be bound to irritate.

Q. Please state any acts or further acts of this command that you have not already testified to that warranted you at that time in going with advice to Major Penrose.—A. I don't know that I can recall any others now. I remember one incident that was reported of two or more soldiers crossing in the boat from the Mexican side in a drunken condition, cursing as they come. One of the inspectors of customs walked down to the boat, and my recollection of the incident is, as it come to my ears at the time, requested them to stop, and one refused, and in some kind of an altercation that followed he was thrown in the mud. That incident occurred before the shooting.

Q. Is there any act that you can narrate to this court of violence committed by any member of that command outside of the Evans incident that was in your knowledge at that time?—A. The Tate matter.

Q. Was there any act of violence on the part of either of those men toward Mr. Tate?—A. Not toward Mr. Tate; no, sir.

Q. Was there any act of resistance or assault toward anybody?—A. Technically it would be considered an assault.

Q. Aside from the brushing against one of the ladies?—A. It was not a question of brushing against one of the ladies, according to all the information obtainable, except the information given by the men themselves. These two men forced their way through this crowd of ladies roughly, jostling them from one side to another.

Q. Aside from those two instances, were there any other acts of violence toward the citizens of Brownsville that you know of?—A. Not that I can recall.

Q. Then, do you mean to say that by reason of that and these other incidents you felt there was such a feeling of antagonism on the part

of the command of Major Penrose that you were warranted to advise him to keep the men off the street?—A. I will state that in connection with other matters that came up to my knowledge, Major Penrose's attitude the morning of our conversation with reference to all these difficulties, invariably, and in each instance, threw doubt as to whether or not his men had been guilty, when it was very apparent that they had been—caused me——

Assistant counsel for the accused:

As associate counsel for the defense, I again request that this witness be instructed as to what are his functions as a witness. My idea of the witness is that he is here under instructions to answer questions directed to him, and on personal privilege he may appeal to the court on any question asked him. If any question is objectionable on any technical ground, upon objection being made that can be ruled out by the court, but throughout the testimony of this witness he has invariably answered questions by means of argument. He understands as well as we understand and as well as the court understands he is going a little beyond his function as a witness; he is certainly doing it in his answer, and I maintain his attitude is not that of a witness and I maintain that he has no function of an argument as a witness, and I ask that he be instructed to answer questions as nearly as possible according to the form as they are propounded and that he will refrain from argument in his answers. I ask the court to so instruct the witness.

The judge-advocate:

May it please the court, I believe the question asked, how it was he happened to arrive at an opinion, and if that doesn't call for an explanation I would like to know what it calls for. It seems to me very strange that the attitude as adopted by the counsel, adopted also by the witness, as the court is well aware, generally should be objected to, and whenever the answers become disagreeable to counsel and his case an objection is at once made, and I affirm for the prosecution that the answer given by the witness, as well as its form, is perfectly proper.

Assistant counsel for the accused:

I would like to have the question read.

(The reporter read the question.)

May it please the court, the answer speaks for itself. He doesn't meet the question fairly; he evades it; he makes use of it to make an attack on Major Penrose's attitude in respect to the people of Brownsville; he maintains the argument throughout.

The judge-advocate:

Perhaps he was not permitted to answer the question.

Assistant counsel for the accused:

So much of his answer that is irrelevant I request be stricken out of the record.

The accused, his counsel, the reporter, and the judge-advocate withdrew and the court was closed, and, on being opened, the president announced, in their presence, that the court decides that the answer as given will not be considered as evidence; the witness will again be asked the question and he will answer it as directly as possible. The court desires that witness abstain from remarks reflecting upon what he conceives the motives of others.

(The reporter reread the question, as follows: "Q. Then, do you mean to say that by reason of that and these other incidents you felt there was such a feeling of antagonism on the part of the command of Major Penrose, that you were warranted to advise him to keep the men off the street?")

A. That, among other things.

Q. Were there any other acts on the part of the enlisted men of the Twenty-fifth Infantry than those narrated by you to this court that

warranted you in advising Major Penrose that there was a feeling of antagonism on the part of his command toward the people of Brownsville?—A. No other that I can remember at this time.

Q. Do you intend to have this court understand that there was no feeling whatever of antagonism on the part of the citizens of Brownsville toward the Twenty-fifth Infantry then stationed there?—A. No, sir.

Q. Do you mean to say, then, by your evidence, which has been read to you twice, that you did believe there was a feeling of antagonism on the part of the people of Brownsville toward the Twenty-fifth Infantry stationed there previous to your visit to Major Penrose on the morning of the 13th of August last?—A. A certain amount of feeling, yes.

Q. Was this feeling of so grave import that you felt warranted in advising Major Penrose to keep his men off the street, as you stated in your evidence?—A. Not in itself, no.

Q. Was that feeling so intense that it was dangerous for enlisted men of the Twenty-fifth Infantry to circulate freely about the streets of Brownsville previous to the first call that morning?—A. Not at all, in my opinion, if they had behaved themselves in a proper manner.

Q. Then, why did you advise Major Penrose against permitting his men to visit there because of personal differences between the enlisted men of the Twenty-fifth Infantry and the citizens of Brownsville?—A. For the reasons that I have given, I feared that the soldiers, knowing, as I did—that is, having come to the conclusion that the soldiers, to use the expression—had it in for the people of Brownsville, I feared that if they come out into town at night, and, as they usually did, circulated around these dives, would get drunk and very probably encounters would follow between these soldiers and the citizens. I will say, in concluding that answer, that I recognized the fact that there was feeling on both sides which would render personal encounters more probable than under other circumstances.

Q. I will again quote your language, "I consider it almost sure to result in personal difficulties, since the feeling was as high as it was." Had you seen anything in the garrison of Brownsville that morning previous to 10 o'clock that warranted you in saying that the feeling was high among the soldiers at Brownsville?—A. I had seen nothing on either side. Of my own knowledge, I knew nothing. It is all, as I frequently stated, hearsay with me, and my opinion is predicated and formed upon definite information that came to me.

Q. Did you state, in answer to a question by the counsel for the accused, that as you went along the street you saw lots of excited citizens talking about the Tate incident and the Evans incident previous to your visit to Major Penrose that morning?—A. I don't remember saying lots of excited people; lots of people—groups of people.

Q. Did you not state in substance that the feeling was high, and gave it as your reason for believing that the people felt indignant about this thing?—A. Yes, sir.

Q. Did you or did you not, since you stated that "the feeling was as high as it was and I advised him not to let his men go into Brownsville," did you not have in mind the feeling of the people of Brownsville primarily and principally?—A. I did not.

Q. Had you seen anything, any acts among the enlisted men of the Twenty-fifth Infantry stationed at Brownsville that morning, previous to your visit to Major Penrose, that would indicate the feeling that you described here, "feeling as high as it was?"—A. I had not seen anything on either side.

Q. Then you predicated your opinion as to the feeling among the enlisted men upon the Tate incident that occurred on the 5th? Is that not true?—A. Possibly.

Q. And upon the Evans incident which occurred on the night of the 12th, which you say was previous to your visit of that day?—A. Yes, sir.

Q. And on the incident of the man being kicked off the sidewalk?—A. I have never said anything about a man being kicked off the sidewalk.

Q. Pushed off the sidewalk?—A. Yes, sir.

Q. Is there any other incident or act on the part of the enlisted men of the Twenty-fifth Infantry, and the swearing of the enlisted men on the street? You mentioned that?—A. Yes, sir.

Q. Do you wish to mention any other?—A. This has occurred to me, that I had heard there was hard feeling on their part on account of being not permitted to drink in the barrooms; they didn't like—they were displeased.

Q. Was there any outward manifestation of antagonism toward the citizens of Brownsville on the part of any enlisted men that come to your knowledge of that incident?—A. I don't know that by reason of that incident; these that I have mentioned came to my knowledge.

Q. Now, were there any other things that indicated to your mind, other than those that we have just gone over, the state of feeling, such as you have described here, "a feeling as high as it was?"—A. Those are the only specific incidents I can recall.

Q. There was no combined or concerted action on the part of the enlisted men of the Twenty-fifth Infantry previous to about midnight on the 13th, that you know of?—A. Not that I know of.

Q. So that these isolated incidents, spread over from about the 1st to the 13th of that month, and Major Penrose's attitude in regard to the Tate affair, was what warranted you in stating the feeling was as high as it was, applying that statement to the Twenty-fifth Infantry?—A. Yes, sir.

Q. Anything else?—A. Nothing that I know of or that I can now recollect.

Q. Now, I will repeat the balance of your answer: "Now, on that point I wish to be entirely fair and be distinctly understood that I am not absolutely positive that this was on the morning of the 13th, but as nearly as a man can be, after that passage of time, I am sure it was that morning. Major Penrose agreed with me in that respect, and said he would keep his men in the post. Now, it is a bare possibility that the conversation took place the morning of the 14th, but it is merely a bare possibility, and I think not." Do you wish to modify that statement in any way?—A. That answer stands as it was made. I have subsequently, under another answer in the direct examination, given my reasons for forming the conclusion that it was the 13th of August.

Q. What time do you get your mail in Brownsville, or did you get it at that time?—A. At that time? Well, I would get my mail each

morning on returning from Point Isabel. The mail came into Brownsville late in the afternoon or at night, I don't recall which. The schedule has been changed four or five times in the last six months, but it come in the afternoon or night, and I would get my mail the next morning on returning from Point Isabel.

Q. Was it delivered that evening or the following morning?—A. I think at that time it was delivered the same night it came in; that is, we have no free delivery there.

Q. Was it your custom to go to the post-office and get your mail the first thing when you came in?—A. Usually, yes.

Q. Tell the court where the post-office is.—A. The post-office is on the corner of Elizabeth—I am not sure as to what side of the street—and a numbered street. I am not positive. If I had a map I could locate it in a moment. That map there doesn't show it, I believe. I think it is Tenth and Elizabeth, but I won't be absolutely positive.

Q. You are certain that Major Penrose didn't send for you, or you didn't get a message when you came into your office on the morning of the 13th that Major Penrose wished to see you or the district attorney?—A. The morning of the 13th; no, sir. I will change that answer. Yes, sir; I am practically sure he didn't send for me the morning of the 13th. I misunderstood the question in answering the first time.

Q. You asked Major Penrose, in that interview of the morning of the 14th, if he examined the guns of his men?—A. Yes, sir.

Q. How soon after you got in did you ask him that question?—A. Within a comparatively short time. It is utterly impossible for me to give you any more than a very general idea.

Q. What did he reply?—A. To the best of my recollection, that he had had the guns examined that morning, but that he had not had them examined the night before.

Q. Did he tell you the result of the examination?—A. Yes, sir; he said that the guns were all clean.

Q. Do you know where the shells for the Army new Springfield gun are made—are manufactured?—A. No, sir; I am not sure where the factory is located.

Q. Do you know how they are marked?—A. What, the shell itself?

Q. Yes.—A. As to the lettering, if any, on them? No. I am not.

Q. You don't know at what arsenal or arsenals they are manufactured?—A. No, sir; I am not sure.

Q. Are you familiar with the Manlicher gun or the Savage?—A. If all this is material, no.

Q. You are not familiar with either?—A. With the Savage; yes. That is, by saying I am familiar with it, I have hunted with one.

Q. Have you ever hunted with the Manlicher?—A. No, sir.

Q. Did you ever hunt with any gun that carries a clip?—A. I have not. In hunting parties in which I have been, parties hunting with the Winchester gun, and I have fired guns belonging to the State Rangers of that type.

Q. Can you tell this court the difference between the Manlicher cartridge that goes in a clip and the Government cartridge that goes in a clip?—A. I can not.

Q. Could you distinguish the two if you were to see them?—A. It is my belief if you would hand me the two shells I could tell you which was the Springfield shell used by the United States Army.

Q. Did you ever compare the marks on them?—A. I never did.

Q. Then, when you testified to Mr. Purdy that you knew what the United States cartridge is, you didn't base your knowledge that you gave him upon an actual comparison you had made of these cartridges with others?—A. With all other shells in the world? No, not by any means.

Q. You did give evidence before Mr. Purdy, did you not?—A. Yes, sir.

Q. And that was subsequently transcribed and you signed it and swore to it?—A. Yes, sir.

Q. Speaking of the Government ammunition, I will quote from your testimony before Mr. Purdy: "Q. Do you know whether such ammunition could be fired from the guns which you have seen, belonging to the citizens of Brownsville?—A. I do not know of a rifle in Brownsville which would carry those shells. And it is my firm belief that there is not a rifle to-day in this city—unless it be one in the possession of the military authorities—which would carry it. Q. Do you know whether these shells are the same kind that were used by the United States troops stationed here at Fort Brown in last August?—A. Yes, sir; it is unquestionably the same ammunition used in the Springfield rifles adopted by the United States Army, and I have fired them many times, using this ammunition. There is quite a difference between this ammunition and the old ammunition used in the Krag-Jörgensen rifle, these last shells being longer and having a decided indentation at the base where the cartridges are held by the clip. I am morally certain that there is not now, and was not on the 13th of August, a rifle in Brownsville that could fire or carry this Springfield rifle ammunition, except those in the hands of the United States soldiers stationed here at Fort Brown." Is that your testimony?—A. To the best of my recollection it is.

Q. Now, you never compared this ammunition with ammunition you had fired down at the target range, did you?—A. In what way do you mean, by putting the two side by side?

Q. Yes.—A. No, sir; not by actually placing them side by side.

Q. Was there anything else, such as the marks on the cartridges or any other thing than what you have stated here that enabled you to say that they were unquestionably the same? I refer now to the cartridges that you examined when Major Combe presented them to Major Penrose.—A. That is not the occasion.

Q. What shells did you refer to in this testimony?—A. They were shells picked up on the streets by the policemen and turned over to Purdy.

Q. Isn't it a fact that these shells were the bullet and shells that had been picked up?—A. I suppose so.

Q. We are talking about those you went up and examined. Were those the shells you had in mind when you were testifying here?—A. The shells I had in mind when I was testifying before Mr. Purdy was a collection of shells that had been picked up on the streets and alleys of Brownsville on the morning of the 14th, and had been delivered by the mayor or chief of police to Mr. Purdy.

Q. You didn't pick any of them up yourself?—A. No, sir.

Q. Did you actually compare these with any that you saw in the hands of the troops at any time?—A. Not by placing them side by side.

Q. Then when you stated they were unquestionably the same here in the Purdy report you had nothing else to fix your assertion in your mind than what you stated there? You did not compare the two side by side, did you?—A. No, sir; I have stated I did not.

Q. And you don't know the marks of the United States new Springfield rifle cartridge?—A. I don't recall them now—the markings on them.

Q. Did you compare the markings of the cartridges you testified about with any other United States cartridges then?—A. At that time, no.

Q. Did you compare it when you went up to examine them when they were in the possession of the police?—A. I made no comparison at any time.

Q. You made no notes in your mind at that time of the marks on them?—A. None at all.

Q. So you don't know whether those shells that you saw there in Brownsville in the hands of the chief of police had the same identical marks as the shells now used in the Springfield rifle or not?—A. To say of my own knowledge, by comparison, no; by reasoning, yes.

Q. You didn't arrive at that by means of the marks?—A. I arrived at the conclusion I formed at the time by a careful examination of the shells at the time.

Q. I mean the stamp on them.—A. I have answered that to the best of my ability—that I came to my conclusion after a careful examination of the shells, including any marks that they had on them, if they had any. I don't remember now whether they had any marks on them. I think if you will hand me half a dozen different shells I can show you the Springfield shell, however.

Q. You don't pretend to know every rifle there is in Brownsville, do you?—A. Oh, no.

Q. Have you discussed this case with Mr. Evans since you have been here?—A. Yes, sir.

Q. How many times?—A. That is impossible to tell you.

Q. Give us your best recollection.—A. I have talked it over with him casually.

Q. Give us the best of your recollection how many times.—A. Possibly two or three times.

Q. Have you discussed it with Major Combe?—A. Yes, sir.

Q. How many times?—A. Again I can not possibly tell you. Possibly two or three times.

Q. Several times?—A. Yes, sir.

Q. Anybody else who is a witness that you had discussed it with?—A. Well, Mr. Dennett. You will understand by the use of the word——

Counsel for the accused:

The court has already ruled that we——

Witness:

I rise to a question of personal privilege.

The court:

I think the witness understands that he is to refrain from conversation with counsel. The court is entitled to hear his answer. We are not interested in any conversation that he may desire to carry on with the counsel for the defense.

Counsel for the accused:

And may I say that, as I understand it, it is clearly within the province of the judge-advocate, and it is his duty—without attempting to dictate—to clear up anything that the witness may desire to clear up.

The judge-advocate:

When he attempts to say what he means by the word "discuss," I think the court has a right to know what he means.

QUESTIONS BY ASSISTANT COUNSEL FOR THE ACCUSED.

Q. Do you know what day of the week the 11th of August was?—A. No, sir.

Q. It was Saturday; and assuming that it was Saturday, was it likely that you went down to Point Isabel Saturday evening and remained there over Sunday?—A. It is probable that I did. I don't remember, as I have before told you, whether or not I did, but I think it probable that I did.

Q. That was your practice, was it?—A. Yes, sir; it was customary for me to remain there during Sunday.

Q. When you returned to Brownsville about 8 o'clock Monday morning, the 13th, you thought you had certain conversations with the citizens of Brownsville prior to your interview with Major Penrose—is that correct?—A. Yes, sir.

Q. Now, with reference to those conversations, with relation to each other, as I remember, you stated you thought you had conversations with Mr. Tate with reference to an altercation between him and soldiers and you thought you had a conversation with Mr. Lon Evans with respect to an alleged assault on his wife. At the time, which of these conversations took place first?—A. I think the one, as I have before stated, the one with Tate.

Q. Then Mr. Evans probably saw you after Mr. Tate?—A. That is my recollection.

Q. The substance of your conversation with Mr. Evans was that you, in the capacity of a friend, would visit Major Penrose and make known——A. The question as to in what capacity I would visit him was not discussed.

Q. At any rate, as a result of that conversation, you did assume to visit the post and relate his charge to Major Penrose?—A. Yes, sir.

Q. Did you make any mention of his accompanying you?—A. To my best recollection, yes. My recollection is that I suggested to Evans that he go with me or that I would go with him.

Q. What is the reason he didn't go?—A. I can't be sure as to that, for something intervened that he couldn't go or I couldn't go.

Q. This visit to Major Penrose was shortly after your coming into Brownsville that morning?—A. It was within, I should say, two hours or two and half hours after.

Q. And very likely after this conversation with Mr. Tate?—A. Yes, sir; after both conversations.

Q. And possibly very shortly before your visit to Major Penrose—the conversation with Mr. Evans?—A. As I have before stated, I can't tell you the length of time that passed between this conversation and the one with Major Penrose, but not very long.

Q. And you can not think of any reason why Mr. Evans did not accompany you on that visit?—A. No, sir.

Q. You state you were introduced by Major Penrose to two or three officers in his office that morning?—A. Yes, sir.

Q. I want to assist your memory. Were you introduced to Captain Macklin?—A. I can't be sure.

Q. Were you introduced to Captain Lyon?—A. Again I can't be sure, and it will be entirely useless to repeat it, because I don't remember.

Q. Were you introduced to Lieutenant Lawrason?—A. I don't remember.

To this question the judge-advocate objected as follows:

I object. The witness has said several times that it will be no use to mention the names as he don't remember any of them.

To which assistant counsel for the accused replied:

May it please the court, in answer to the objection of the judge-advocate, I will state that the witness testified in his direct examination that he was introduced by the accused to two or three officers of the command; upon his cross-examination he has stated that he doesn't remember the names of the officers. I will state that my purpose is to try and refresh his memory and I am going to name over each one of those officers and ask him whether or not he remembers that officer. I don't think I am going beyond my rights in this, and I ask that the court permit that series of questions.

The judge-advocate:

The judge-advocate does not wish a ruling in closed session.

Q. Were you introduced to Lieutenant Lawrason?—A. I don't know.

Q. Were you introduced to Lieutenant Grier?—A. I don't know.

Q. You stated that one officer remained in the office during your entire conversation with Major Penrose. Is that correct?—A. I stated to the best of my recollection, one did.

Q. Do you know in what capacity he was serving at the post?—A. I do not.

Q. Do you know whether or not he was adjutant at the post?—A. No, I do not. I can describe to you where he was sitting in the room.

Q. Will you describe it?—A. He was sitting at the desk to the right of the door leading into the office from the hall.

Q. Was he in such a position that he could clearly hear the conversation between you and Major Penrose?—A. I think he might have heard all of it.

Q. Is it likely that your relation of an incident like that of the Tate affair would have directed the attention of any officer who was present in that room?—A. You are calling for a conclusion? Yes, sir; I think so.

Q. It was of such importance that it probably would?—A. Very probably would.

Q. Do you think your relation of an incident like the Evans incident would have called his attention?—A. Yes, sir; I think so.

Q. Was it of such importance that it would have called his attention?—A. That is my opinion; yes, sir.

Q. You stated positively in your direct examination that part of this conversation did take place subsequent to August 13, 1906?—A. Yes, sir.

Q. Do you know of any reason why you should postpone any portion of that conversation in regard to the Evans incident?—A. What conversation do you refer to?

Q. A conversation with regard to an alleged assault upon Mrs. Evans.—A. I am not sure, if on the morning of the 14th we discussed the Evans episode at all.

Q. Does not your direct testimony state that part of this conversation took place on a subsequent date?—A. You mean the conversation between Major Penrose and myself?

Q. Yes.—A. No, sir; I think not.

At 4.50 p. m., the court adjourned to meet at 10 o'clock a. m. the following day, Saturday, February 16.

CHAS. E. HAY, JR.,
Captain and Judge-Advocate, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., February 16, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocate. The accused, his counsels, the reporter were also present.

Mr. CREAGER was reminded that he was still under oath.

CROSS-EXAMINATION CONTINUED.

BY ASSISTANT COUNSEL.

Q. Mr. Creager, just to give you the sequence, I will read over your last questions and answers. (Counsel read testimony from next to last question on page 624 [298] to end of page 625 [299]. Counsel also read last question and answer on page 550 [265].) Why should you have postponed part of your conversation on the Evans matter until another morning?—A. I don't know that I did. As I have previously stated, I believe it all occurred on one morning. There was no postponement of any conversation with him. We may have resumed the same subject on the following morning; I can not be positive as to this.

Q. Do you believe you talked about this subject on one or two mornings?—A. The probabilities are we discussed it both mornings; I can't be positive as to this.

Q. On August 14, to your mind, what was the proximate cause of the shooting of August 13?—A. I don't know as I grasp the full meaning of your question.

Q. On August 14, to your mind, what was the proximate cause of the shooting of August 13, 1906?—A. That would require quite an extended answer.

Q. Can you answer it?

By the judge-advocate:

May it please the court, this question apparently calls for an opinion of the witness, as I understand it. I don't know as I thoroughly understand it, but if it does so call for an opinion, I would like to object to it.

(The question was read over by the reporter.)

By the judge-advocate:

I will object to the question, may it please the court, as calling for an opinion.

By the assistant counsel:

I will reply to the objection, may it please the court, by stating that the prosecution has served to fix the date in evidence by means of the opinion of the witness. He has on several occasions testified he is unable to fix that date positively, and the judge-advocate has permitted him to fix that date by means of an opinion, and now objects to my examination of the witness calling for his opinion on other facts which tends to fix this date not as the 13th of August, but as a subsequent date. The objection is manifestly unfair, and I think I am protected in my right by the ordinary rules of cross-examination.

By the judge-advocate:

I confess to the court that I don't thoroughly understand the question myself, but I understood it as calling for his opinion as to what caused the shooting of August 13, and if so, I do object to it on the grounds stated.

By the counsel:

The question may be read as many times as you desire; the wording is very plain. It is not possible to understand a question singly—by itself—taken in connection with other questions in a line of examination of a witness.

By the judge-advocate:

I insist upon the objection, may it please the court.

The accused, his counsels, the reporter, the witness, and the judge-advocate then withdrew and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce the decision of the court that the objection be not sustained. The question will be answered.

(Question was read to witness.)

A. To be as brief in my answer as possible. The evil disposition and lack of proper discipline among the negro troopers stationed at Fort Brown.

Q. Did you consider the Evans incident in that connection?—A. Exactly what led to the formation of my opinion it would be pretty hard to say. That undoubtedly influenced me.

Q. Largely?—A. I can't tell you how largely.

Q. What is your belief?—A. I have none.

Q. You mean to state positively to the court you do not think that the Evans incident largely influenced your belief?—A. I do not mean so to state.

Q. Is it likely that such incident would have been uppermost in your mind on the 14th of August?—A. If you are asking for my opinion, it seems probable it would have been.

Q. Where did you go after leaving Major Penrose's office on the 13th of August?—A. To the best of my recollection, to my own private office.

Q. Did you have any conversation about the Evans incident on the morning of the 13th of August after leaving his office?—A. To my distinct recollection I can not say yes or no distinctly, but the probabilities are I did discuss it.

Q. Did you on either the 13th or 14th of August inform Mr. Tate of your conversation with Major Penrose; that part of it?—A. I can not be absolutely positive. I think that I had a conversation with

Tate within that time, in all probability; I can not now be positive as to that.

Q. Did you on the 13th or 14th of August inform Mr. Evans of your conversation with Major Penrose?—A. I answered that question at great length yesterday, and I will have to give you the same answer now; I don't know.

Q. You believe you did?—A. I can't say I believe I did on the 13th or 14th of August; I am quite sure in all probability we discussed it again in the next four or five days.

Q. You believe you did on the 13th or 14th?—A. I don't know now what my belief was then.

Q. Do you believe now that you did?—A. If you are asking for my opinion——

Q. I am asking for your belief now.—A. I have no positive belief on that point, whether I did or not on the 13th or 14th.

Q. You are more positive with respect to having a conversation with Mr. Tate relating to the result of your conversation with Major Penrose than you are about having a conversation with Mr. Evans. Is that true?—A. I believe I can say yes to that. You will understand that I am morally certain I talked with both of these men within the following two, three, or four days, possibly the same day, I won't be sure.

Q. You had made no offer to Mr. Tate to go with him to see Major Penrose?—A. Not to my recollection now.

Q. You did agree, however, to act for him with Major Penrose?—A. In one sense, yes.

Q. You did make an offer to go with Mr. Evans to see Major Penrose, did you not?—A. Yes, sir.

Q. You did not agree to act for Mr. Evans with Major Penrose?—A. In one sense, yes.

Q. You did or did not?—A. In one sense, I did.

Q. What sense?—A. I told him that I would see Major Penrose, and offered to go with him, or he asked me to go with him and I agreed to do so, and to that extent and in that sense I agreed to act for him.

Q. Did or did not you agree to go for him to see Major Penrose, or to act with him? Is that correct?—A. No; it's not correct. The understanding between Evans and myself was that I was to see Penrose—either he or myself suggested that we go together—I don't remember positively which.

Q. I will read your testimony on that point. (Counsel read witness's last answer on page 546 [263] of record.)

Q. This offer was not accepted by Mr. Evans, was it?—A. Which offer?

Q. This offer of yours to go with him to see Major Penrose.—A. To my best recollection, it was accepted; I can't be sure in which way, whether it was an offer on my part or following a request on his; I can not be positive on that. I have given you—you have just read over—my best recollection.

Q. But it was not accepted?—A. I think it was accepted; but my recollection is, I was unable at the time to go and told him we would get together later—I would meet him, and, failing in this, I went by myself.

Q. Mr. Creager, I would like to caution you—you are on the witness stand—that I am examining you, and you will be required to listen to the question given and when that is finished you will give your answer.—A. It is pretty hard to tell when you are through sometimes.

Q. I will repeat the question. This offer was not accepted—that offer mentioned in that answer I have read from previous record—was it?—A. I have just finished answering that to the best of my ability.

Q. Will you please repeat it?—A. Repeat your question.

(Question was read.)

A. To the best of my recollection, it was accepted by him.

Q. In other words, did he go with you to see Major Penrose or not?—A. He did not.

Q. That was the offer you made him, was it not?—A. It was.

Q. And yet you say it was accepted?—A. To the best of my recollection, verbally, yes.

Q. He did go with you?—A. No.

Q. You do know that Mr. Evans did go to see Major Penrose on that date, do you not?—A. I do not, except by hearsay.

Q. Did Mr. Evans tell you so?—A. I really can't be sure. The probabilities are that subsequent to this he did. I understand—it is my information——

(At this point the president of the court addressed the witness as follows: "The witness has already been requested to answer the questions as directly as possible, and not to bring in other matter unless in the way of explanation." To which the witness replied: "If the court please, this was in the way of explanation.")

A. (Continued.) That Mr. Evans did go in company with Mayor Combe, of Brownsville, to call on Major Penrose, but as to whether Evans himself told me this or Combe, or possibly others, I can't be sure.

Q. When were you told of this?—A. I can't be sure.

Q. Were you told on the 13th of August?—A. I could hardly have been told on the 13th when the occurrence was on the 14th.

Q. Mr. Evans did not go to see Major Penrose until the 14th of August, then?—A. I told you my information with reference to that is entirely hearsay, but since you mention it I believe he did go on the afternoon of the 13th with Combe. My call was on the morning of the 13th.

Q. As a matter of fact, you are not very positive about this date at all, are you?—A. I am morally sure it was the morning of the 13th I paid this call to Major Penrose.

Q. Yesterday morning you testified as follows: (Counsel read first question and answer thereto on page 558 [268] of record.) Will you please explain why it would have been absurd for you to have to advise Major Penrose on the morning of the 14th of August.—A. Because Major Penrose had pickets at about every 10 or 12 feet along that wall for the very purpose of keeping his men out of town and keeping the townspeople out of the post.

Q. Do you know for what length of time that had been taking place?—A. To the best of my knowledge, since the morning of the 14th.

Q. It would have been equally absurd for the mayor of Brownsville to so advise Major Penrose on the morning of the 14th, would it not?—A. I think the advice would certainly have been unnecessary.

Q. Do you know he did so advise Major Penrose?—A. I do not know so. I don't recollect ever having heard him so advise him.

Q. If he did give such advice it was absurd, then?—A. Calling for the witness's opinion, I don't know as I would put it so strong as that, to say it was absurd. Possibly it would be better to say I would consider it totally unnecessary.

Q. It would have been absurd for you to have advised him and totally unnecessary for the mayor of Brownsville to advise him?—A. It would have been equally unnecessary for either one of us, of course, in either case.

REDIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. As a matter of fact, Mr. Creager, was the Evans matter, viewed in the light of the events of the night of August 13, considered as a topic of such importance as to exclude other topics, on the morning of the 14th?—A. Absolutely by no means.

Q. Did you inform Major Penrose on the morning of the 14th, or did he inform you that the soldiers were also incensed against the townpeople?—A. Not in that language, sir.

Q. Was that idea brought out by either one of you?—A. Only in the way I have previously stated—that I expressed regret that feeling had arisen, and he joined me in that regret and concurred with me in regretting it.

Q. What I want to get at is, feeling had arisen against whom?—A. Well, the inference was between the townspeople and the negro soldiers.

Q. The feeling, in other words, was reciprocal?—A. That was certainly the idea in my mind, and I presume was the idea in his, but there was no positive statement on this point.

Q. Did you know that soldiers "had it in for" the citizens? You used that expression yesterday.—A. To say that I knew it, no. I did not know it. It was my opinion that they did.

Q. Did you tell Major Penrose so?—A. No, sir.

Q. Did you ever see a Manlicher gun in Brownsville?—A. Never within my knowledge or recollection.

Q. If there was any there you would be likely to have known it?—A. It would be possible for one to have been there, but I believe I would have known of its being there. It's entirely possible one might have been there without my knowing it.

Q. You stated also yesterday that you had discussed this case since you had come to Fort Sam Houston. Will you please explain what you mean by discussing?—A. I mean speaking of the evidence as given out by the press—discussing the methods of counsel in examination of witnesses, cross-examination of witnesses, rulings of the court, and in matters of that kind generally, casually meeting men on the street car—meeting them outside the doors of this room—just such natural conversations as would ordinarily come up between parties summoned as witnesses in a case.

Q. Did you refresh your mind on any of these points, or did you refresh the minds of any of the witnesses with whom you talked?—A. Not intentionally. I can not say that I did not, but not to my knowledge.

Q. You said yesterday that if you saw several cartridges together

you could pick out a Springfield cartridge, if there was one in the number.—A. I believe I could, sir.

Q. What are these, if you can tell (handing witness a number of cartridges)?

By the counsel for the accused:

Is this witness being introduced as an expert on shells?

By the judge-advocate:

He is not, sir; these shells are not to be introduced as evidence.

By the counsel for accused:

Then they are not subject to that examination, and we object. When they are once introduced and placed in evidence we are willing they shall be so examined, but we object until they are so introduced. You might just as well go out here and hand him a stone, and we decidedly object. We ask for a ruling of the court.

By the judge-advocate:

I am willing for a ruling of the court. It was not objected to a day or two ago and I don't see why it should be now.

By the counsel:

We object to the examination by witnesses of anything that has not been properly introduced before this court.

By the judge-advocate:

It will be subsequently introduced. It is one of the fundamental principles of law, as the court is well aware, that the case should not be required to be proved all in one moment. There are certain little steps that must be taken. We intend now to have the witness examine those shells, and at some subsequent time to introduce them in evidence. We understand the objection of the defense to their introduction as evidence and realize the point is well taken, but we do affirm it is not improper for him to examine these shells now.

By assistant counsel:

May it please the court, I object to any conversation between the judge-advocate and the witness that is not in open court.

(At request of the court, the objection of the counsel and reply thereto by the judge-advocate were read over.)

By the counsel:

I simply wish to remind the court in this connection that, probably through oversight, the judge-advocate is in error when he said we did not object to those shells the other day. As soon as we had an opportunity to object—the court took a recess—we assume they are the same shells, may it please the court—as soon as we had an opportunity to interpose an objection, we did object to them. And the judge-advocate distinctly withdrew them from evidence and from examination by the court. We have had nearly two weeks of court here, and we have no objection to him introducing those properly and letting them stay here as exhibits before the court, but we do object to them being bandied back and forth in this manner until they are properly introduced. He has plenty of witnesses who can identify them, and that would make the matter smooth and plain sailing. And we also request a second instruction. Yesterday afternoon this witness was allowed to go up and whisper in the ear of the judge-advocate; this morning there was a conversation between the witness and the judge-advocate, to which neither the defense nor the court was a party, and we ask the court to give proper instructions in that regard.

The accused, his counsels, the reporter, the witness, and the judge-advocate then withdrew and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce the decision that the objection be sustained. Also that the judge-advocate and witness be admonished not to hold conferences before the court that are not made a matter of record.

The court then took a recess until 11.20 o'clock a. m., at which hour the members of the court, the accused, his counsels, the reporter, and the judge-advocate resumed their seats.

The judge-advocate then addressed the court as follows:

Before introducing this next witness I would like to make a very brief statement to the court, in order to set myself right in their eyes. The witness yesterday, and again this morning, as the counsel observed and as the court observed, called me to his side, and I was under the impression it was about something of a private nature—such as getting a glass of water, or something of that nature—and this morning I understood he wanted to hand me these shells, as I walked to his side, and the record will bear me out that I asked him no questions after he did whisper to me. I took no advantage of what he did say. I am well aware of the impropriety of holding conversation with the witness while he is on the stand.

W. F. DENNETT, a witness for the prosecution, was duly sworn, and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please give your name, your occupation, and residence.—A. W. F. Dennett, real estate, Brownsville.

Q. How long have you lived in Brownsville, Mr. Dennett?—A. Over forty-one years.

Q. Were you living there on August 13 and 14, 1906?—A. Yes, sir.

Q. Did you have occasion on or about this time to visit the post of Fort Brown?—A. Yes, sir.

Q. Please state to the court all the circumstances connected with this visit.—A. On the morning of the 14th of August the citizens of Brownsville assembled in mass meeting in the Federal court-room. They discussed the outrage that had been committed the night before and appointed a committee to investigate the said outrage. Capt. William Kelly, president of the First National Bank, was made chairman of that committee. Immediately after the mass meeting adjourned the committee concluded to at once visit Fort Brown and see the commanding officer, in the performance of their duties. They proceeded down the street, the chairman at the head, with Major Combe, the mayor of the city, to the administration building; there we met Major Penrose and a captain and a lieutenant. I can not recall their names. After introductions, Major Penrose made a statement to the committee. He said, amongst other things, expressed his regret at the occurrence—what had occurred—seemed to be deeply affected, and he stated that the night previous when our mayor, Doctor Combe, visited him the first time he was under the impression that the citizens of Brownsville had attacked Fort Brown, and told him so, had attacked the soldiers; but that at the second visit of our mayor in the morning, where he showed the empty shells, and I think the unexploded ammunition and the clip, that that compelled him to believe that the shooting had been done by his soldiers. And he went on to express his regret. After he stopped, our chairman, Captain Kelly, asked him, said: "Major, have you had the side of the barracks next Brownsville examined to see if there are any bullet holes in them or any signs of any firing having been done against the garrison by the town?" And he replied that he had had them examined—that side of the barracks—and had found no bullet holes nor any sign of an

attack. The only thing they found was one broken pane of glass, and that looked like it had been broken by a piece of brick. After further discussions and questions, and the point not having been brought out yet, I asked Major Penrose if he had made a personal examination of the men, the guns, and the ammunition the night before after the firing. He replied no, he could not be everywhere. I asked him if the commissioned officers under his command had made such examination. He referred that question to the two commissioned officers who were present. One, a captain, was sitting at his right hand, another, a lieutenant, was sitting at his left behind a table. As I said, I don't remember their names. They each replied no, they had not made such personal examination of the arms and the ammunition, etc. Then I asked him a third question—if he had gained all the knowledge that he had of the affair of the night previous through reports to him of the noncommissioned officers and privates of his command, and he replied yes. And then he seemed to be very much affected again and addressed the committee and said how bad he felt over the occurrence and that he would sooner have lost his right arm than have had the thing happen.

Q. Where do you live in Brownsville, Mr. Dennett?—A. I live on the south corner of Fourteenth and Adams streets.

Q. How far is that from the the reservation of Fort Brown?—A. One block. Fifteenth street begins at the end of our block.

Q. Did soldiers frequently pass your house or not?—A. Yes, sir.

Q. What was the attitude or manner of these soldiers just prior to August 13, 1906?

By counsel for the accused:

May it please the court, we would like to ask the purpose of this question. We may not object, but we would like to know the purpose of it.

By the judge-advocate:

I think the question is plain enough. We want to know what the attitude or manner of these soldiers was, if it was anything out of the ordinary or not.

By the counsel:

We insist on knowing what the purpose of that is, because it is not alleged here and we are entitled to know, so as to formulate an objection. That is all.

By the judge-advocate:

The question is entirely immaterial and in order to save another clearing of the court I will withdraw it.

Q. Will you describe the state of feeling existing in the town either for or against the soldiers just prior to August 13, 1906?—A. Well, when the soldiers first came there there was no feeling against them that I knew, but after the Tate affair, and especially after the Evans affair, why there were a great many of the townspeople that were very much excited over the matter—and there were other things that occurred also.

Q. Will you kindly state any of these other things you may remember?—A. Well, my neighbor on the next block, Mr. Goodrich, he was forced to take the street; there were three soldiers walking up the street one day when he was going to lunch.

Q. About what time was this?—A. You mean the date?

Q. Yes.—A. I think several days before the 13th. They were

there, I think, only two or three weeks before the shooting occurred. I had not completed that answer about Mr. Goodrich.

Q. Please continue.—A. He was going to lunch one day——

By counsel for accused:

I would like to interrupt the witness. Does he state that of his own knowledge?

Q. Does the witness state that of his own knowledge?—A. Mr. Goodrich told me so himself.

By the counsel:

I object, may it please the court, on the ground that it is hearsay.

By the judge-advocate:

(To witness.) Please confine yourself to things you know.
We have no intention to slip this in, may it please the court.
(To witness.) To what you know, and not what you have heard.

Q. Is there anything you know, of your own knowledge, which these soldiers may have done?—A. I have seen my neighbors' children gathering—young ladies and children, down to small children three or four years of age—in groups of perhaps 6, 8, 10, or a dozen in front of my house, across the street—young ladies and small children—and, all of a sudden, I have seen them scatter like a flock of pigeons and run to the shelter of their homes. Immediately I have seen colored soldiers coming afterwards. I have seen and heard colored soldiers coming down the street passing remarks on young ladies——

Q. What kind of remarks?—A. Well, they were, I judge, offensive remarks. I don't recall what they were now. They were kind of such remarks that we would not like to have——

Q. Anything further that you know of your own knowledge?—A. I have heard the soldiers using obscene, profane language in passing my house at different times, these same negro troops. They came out at different times in—well, like—they were not on leave, they were not nicely dressed, they were poorly dressed and dirty.

Q. Were these obscene remarks you have just referred to made in the presence of anyone?—A. After they would pass houses where these young ladies were standing on the porch—got inside of their porches—I could hear them making remarks.

Q. The same kind of remarks?—A. Yes, sir.

Q. Is there anything further that you know of your own knowledge?—A. I can not recall anything else at present, sir.

Q. What was the feeling that existed in the town subsequent to August 13, 1906?—A. On the morning of the 14th, the first thing I did was to go downtown and replenish my stock of ammunition, and after that—up to the time the negro soldiers left Brownsville—for several days I slept with a Winchester under my bed so I could reach it at a moment's warning. My two sons were home and they each had arms and ammunition in their rooms they could put their hands on at a moment's notice. I suppose the rest would be hearsay.

Q. The feeling existing in a town is a fact, if you know it as such.—A. Was fear that the town might be attacked again by the troops of the garrison before they left.

Q. How was this evidenced?—A. By quite a number of my neighbors every night moving their families, and some of them themselves, the gentlemen, going further into town to sleep.

Q. Away from the post or toward the post?—A. Away from the post, where they would have the protection of brick houses, and there were several of the families of the town, to my knowledge, that moved their families to Matamoros until after negro troops left there.

CROSS-EXAMINATION.

QUESTIONS BY THE ACCUSED.

Q. What time of day was it when your committee visited Major Penrose on the 14th?—A. I think, sir, it was between 11 and 12 o'clock in the morning.

Q. And you are quite positive that both he and his officers said there had been no examination made of the guns up to that time, 11 o'clock, say, of the 14th of August, 1906?—A. That was not my answer, sir.

By the counsel:

I would like to have the record read, I don't want to misquote Mr. Dennett. What I refer to is the examination—direct examination—as to what these three officers, to wit, Major Penrose, the captain, and the lieutenant said to him.

(The reporter then read that portion of the witness's testimony requested by counsel, page 639 [305, 306] of the record.)

Q. Now is your memory refreshed as to that?—A. Yes, sir.

Q. Did Major Penrose say to you that neither he nor his commissioned officers had made an examination of the guns or the men of his command up to that time?—A. Major Penrose replied to my first question that he had not. Afterwards, when I asked him a second question, he referred that question to the two officers present, and they each replied that they had not.

Q. I have asked this witness, or intended to do so, whether Major Penrose's reply, as he understood it, covered all of the time from midnight the night before up to the time of the visit of this committee. That's the question I wish to bring out. Did or did not Major Penrose in his reply say to you that there had been no inspection made by him or by his commissioned officers up to and including the time that you asked this question from midnight the night before?—A. The question was only referred to the two officers present.

By the counsel:

May it please the court, we ask for a categorical answer, yes or no. It is asked whether Major Penrose said to this witness that he had not made an examination of his men nor had his commissioned officers made an examination of his men's guns from midnight the night before up to 11 o'clock or the time this committee visited there. It is susceptible of a categorical answer and we would like the court to instruct the witness to give it.

By the judge-advocate:

The witness evidently does not understand the question, is my opinion.

By the counsel for accused:

It can be read and he is capable of understanding it.

Q. Did Major Penrose say to you and give you to understand that he had made no inspection of his men or guns of his command from midnight the night before up to and including the time of your visit?—A. His reply to my question was that "I could not be everywhere." If you want my understanding of what his reply meant, I can tell you.

I understood from his reply that he had made no such personal examination of the guns and ammunition, but his reply I have already given.

Q. Did his commissioned officers, to wit, the captain and the lieutenant sitting there state to you that no examination of these guns had been made by them during this same period, to wit, from 12 o'clock the night before up to and including the time of your visit?—A. The question was not put that way. The question was put, if the commissioned officers under his command had made such personal examination of the men, the arms, and the ammunition. He referred that question to the two officers present, and they each replied, no.

Q. They gave you the distinct understanding, then, that they had made no examination of their guns from 12 o'clock the night before until the time of your visit?—A. They gave me the understanding, sir, that they had made no personal examination.

Q. Then did you wish to be understood by us that Major Penrose or these commissioned officers conceded to the fact that every inspection or any inspection of the guns or ammunition that had been made during the period in question was made solely by the noncommissioned officers?—A. Well, in reply to that question I will say this, that I didn't understand it that way. I didn't understand that from the time of the firing at midnight the night previous up to nearly midday the following day there had been no inspection or no personal inspection of the arms and the ammunition, but I did understand that there had been quite a time had intervened after the firing when there was any such personal inspection or examination of the arms and the ammunition by the commissioned officers at Fort Brown, or by those to whom the questions were asked.

Q. Now, will you tell the court, please, what interval of time you understood did elapse during which there was no personal inspection by the commissioned officers of Fort Brown of the arms and ammunition?—A. I am not competent to answer that question. I could not tell.

By the counsel:

May it please the court, witness has distinctly said, in answer to a previous question, that he didn't understand this was allowed to go during the whole time. Now I want to know what time did elapse. It is a perfectly plain, simple question.

A. I could not tell because I was not there, only at the time the committee was there.

Q. We want, Mr. Dennett, simply the impression you got at the time, as to what length of time Major Penrose and his commissioned officers permitted to elapse after the shooting at midnight until he made an examination of those guns and ammunition.—A. Well, sir, I had no facts upon which to base an idea and I could not formulate any such idea.

Q. In your direct examination, Mr. Dennett, I personally got the distinct understanding from it that you intended to convey the idea that up to the time of your visit neither Major Penrose nor any of his commissioned officers had made an examination of either the guns or ammunition. You modified that on cross-examination by saying that you didn't understand that that full time elapsed. Now, we want to know what time did elapse. You must have had some distinct understanding or impression at that time, and that's what

we want.—A. I don't feel competent to answer that question, sir. I was not in the garrison at the time. I don't know what time elapsed. You just gave in my testimony the replies I got to my questions.

Q. Will you now state to the court, Mr. Dennett, why you have just testified that you didn't understand that the full time elapsed before the inspection was made?—A. Just because I wanted to give you an answer to your question. That was all. The full time might have elapsed without such personal investigation, or there might have elapsed some hours of time before the personal investigation. As I have said, I don't know.

By counsel:

We are not asking for a discussion of this. We want to know. The witness has given a statement as to exactly what impression was made on his mind by these questions and answers. He stated it positively on direct examination; he changed or modified it on cross-examination, and we are entitled to know what impression was made on him by the answers at that time, and what period of time he meant to cover when he asked these commissioned officers what their acts had been. Now, I will formulate that again, because it is important; it has a direct bearing on this question.

Q. Did you intend by your question to Major Penrose to cover the period of time from midnight the night before up to the time of the visit of this committee on the 14th, when you asked him about the cleaning of those guns?—A. Well, that hadn't entered into my mind at the time, about the time; it was merely a question which I asked Major Penrose.

Q. Will you tell the court just exactly what your question was to Major Penrose about the inspection of his guns?—A. I asked Major Penrose if he had made a personal examination of the men, the guns, and the ammunition under his command, and he replied, "No; he couldn't be everywhere."

Q. Did you intend your question, as now repeated, to relate to the immediate time, or did you intend to cover the whole time from 12 o'clock to the next day?—A. Now, my memory is refreshed, I did not intend to have it cover the whole time.

Q. What did you intend to have it cover, Mr. Dennett? That's what we want to know.—A. A reasonable time for such examination to have been made after the shooting took place.

Q. Now, will you tell the court what you consider, then, as a reasonable time; what you had in your mind then as a reasonable time for him to cover in his answer?—A. I am not very familiar with military affairs; I don't know how long it would take a commanding officer to do that, but I should think it ought to be done in an hour or two.

Q. Then you meant to cover an hour or two when you asked that question?—A. I am not specifying any particular time, sir, such time as was necessary for an officer to perform his duty in that respect.

Q. Did you have the same idea when you asked his commissioned officers in regard to that?—A. Yes, sir. When he told me he could not perform that duty because his duties required him somewhere else, or he could not be everywhere, then my idea was to get at the fact as to whether such personal examination had been made by the commissioned officers under his command.

Q. Then, if your question only related to an hour or two—if that

was in your mind—why didn't you ask him—or did you ask him—whether it had been done after daylight the next morning?—A. No, sir; I did not want to go into detail too much.

Q. You did not pursue the matter further?—A. No, sir; only those three questions.

Q. Did you go away from that interview with the distinct impression that Major Penrose had neglected to make any examination at all up to the time of your visit?—A. I went away from that interview with the impression that the examination of the arms and the ammunition and the soldiers of the command was delayed so long that it was impossible to find out any facts.

Q. You spoke of delay, Mr. Dennett. Then, if there was a delay, you must have had an impression in your mind that these guns were inspected at some time before you left. Is that true?—A. I never thought of that, sir.

Q. You interjected the question of delay, and that creates that impression in my mind. I will repeat the question. Did you have the impression that no inspection had been made at all of these guns and ammunition?—A. I never thought of it, sir. I was trying in my questions to find facts, if I could. I did know that the firing had occurred at midnight the night previous. It had not taken over ten minutes—perhaps twelve or fifteen—the time is immaterial—in a minute or two—and I thought in a short while thereafter, perhaps, such time as was necessary for a commissioned officer of the command—that after a reasonable time they could have ascertained material facts.

Q. But, as I understand you, you didn't go on to clear the matter up—find out whether there had been any inspection at all of the arms and ammunition in that post?—A. I asked only those three questions, sir.

Q. When you asked those questions did you intend to include also whether he had made any inspection of the members of his command, or examination of them, too?—A. Well, I understood, from a personal examination, whether the major had gone over there himself and personally inspected the troops with their arms and ammunitions immediately after the firing ceased, or within a reasonable time thereafter, as soon as it was time to do such a thing.

Q. Do you want this court to understand that Major Penrose said there was no examination of the members of his command that night about midnight?—A. No, sir; I don't want them to understand anything of that kind, because that is not in my testimony at all.

Q. You mentioned members of the command, if I so understood?—A. Yes, sir.

Q. Did you intend, when you asked these questions of Major Penrose—did you want him to understand that you included the question of checking up his men immediately after or about 12 o'clock that night?—A. The idea I wanted to bring out was this: I wanted to find out if there had been the proper inspection of the command and their arms and ammunition—to see if there was any way they could find out who the guilty persons were.

Q. Did Major Penrose say to you there had been no examination of his men that night?—A. He told me——

Q. Did or did he not tell you there had been no examination of his command by himself or his commissioned officers that night?—

A. He told me he made no such examination, in reply to my question, but the second question was referred only to the two commissioned officers that were present, and each replied no, they had not made such personal examination.

Q. You want this court to understand that you asked a direct question, including the members of the command, and these commissioned officers told you positively there had been no examination or check up of that command on the night of the 13th and 14th of August, nearly at the time of midnight?—A. The question was referred to them by Major Penrose and they replied to him, as I understood——

(Question was repeated.)

A. I asked the direct question to Major Penrose and Major Penrose referred the question to the two commissioned officers present, and they replied no to the major; at least I so understood them.

Q. Did those commissioned officers say to you in direct terms there had been no check up of those men by commissioned officers that night about midnight? (Now we ask for a categorical answer, may it please the court—yes or no. We are entitled to it.)—A. May it please the court, may I say a few words, too? A categorical answer, yes or no, to that question will leave a wrong impression, because——

By the president of the court, to the witness:

I think you don't fully understand the question, perhaps. The question means to draw out whether there was anything further said; did they confine themselves simply to that one answer or was there anything there that led you to believe there was no check up? You asked a certain question.

By the counsel for the accused:

May it please the court, I would like the privilege, as it is my question, of explaining exactly what we want. This witness has left, by his evidence, a distinct impression in my mind that these men were not examined or checked up by commissioned officers that night, and I want to get a direct answer whether he means to say that to us or not. The court is entitled to hear it, and we want to know, and we are clearly entitled, in our opinion, to instructions from the court to this witness to give us a categorical answer.

Question to witness by president of court: "What's meant by check up? Do you understand?" To which the witness replied: "I presume roll call." President then said: "Yes, to verify the presence of the men. You understand that's what the counsel desires from you. To know if that was included."

A. There was nothing said about a roll call that I know of.

(Question repeated, at request of counsel.)

A. No, sir; their reply was to the commanding officer, Major Penrose.

Q. Did those two officers say to Major Penrose, in your presence, that there had been no examination or check up of those men that night at 12 o'clock?—A. The word roll call or check up was not used at all.

Q. Did those two commissioned officers in the room with you that morning say to Major Penrose that there had been no examination of the members of his command that night?—A. The men of the command, the arms, and the ammunition.

Q. Only?—A. Yes, sir; roll call and check up was not gone into.

Q. Then when you included the word "members" in your direct examination you were mistaken? You referred solely to ammunition and men?

By the judge-advocate:

I think counsel did not understand all of witness's answer.

(At request of counsel, answer of witness, top of this page [312], was read over.)

Q. Then the men of the command, as you understood, that night were not examined by the commissioned officers at all?—A. Those present.

Q. Then those two commissioned officers there present stated to Major Penrose, in your hearing and in the hearing of the committee, that no examination of the men had been made the night before?—A. No personal examination of the arms, the ammunition, and the men was made the night before. That was my understanding. Their answer—reply—to the commanding officer was, no, there had been none within a reasonable time after the firing had ceased.

Q. Then do you wish this court to understand that they gave you to understand in their reply to Major Penrose that they had done nothing to determine whether the members of the command had been out or not, or were absent at that time, 12 o'clock, I mean?—A. They gave me the impression in their replies to Major Penrose that they had made no personal examination of the command, the arms, or the ammunition.

Q. And you understood by that that these men may have been absent and they knew nothing about it; that they had made no efforts to find out?—A. I understood from the three questions I asked—the third question should be also included—that the only examinations made of the command, the arms, and the ammunition were done by the noncommissioned officers, or that the major got his information from the noncommissioned officers and privates of his command, all the information that he knew of the occurrence of the night previous.

Q. You testified that prior to August 13 and 14 there was very intense feeling against the enlisted men of the Twenty-fifth Infantry, colored soldiers; is that true?—A. No, sir; I testified that there was considerable feeling against them after the Tate affair and after the Evans affair. Before that—why, of course, we have had negro troops in Brownsville during the forty years of my——

Q. We will bring that out later. I want to get at the question of the feeling at the time, if you please, Mr. Dennett, and you stated that this was due to the Tate affair and the Evans affair largely?—A. Yes, sir.

Q. You knew nothing about these of your own knowledge, did you?—A. No, sir.

Q. Just hearsay?—A. Just as they were reported in Brownsville.

Q. Tell us exactly what this feeling was; describe it to the court so we will know what kind of feeling there was.—A. We naturally were incensed when we found that our wives and daughters were not safe from those soldiers of the United States who were sent down there to be our sworn defenders and protectors——

By the counsel:

May it please the court, we don't think this is answering the question. We asked him to describe the feeling that existed. It is true he said "We were incensed," but we want the feeling, how it was manifested; any way he will describe the feeling itself.

A. Naturally, we were very much incensed against the attempt——

Q. Incensed toward the soldiers?—A. Yes, sir.

Q. When did this feeling first manifest itself to you? Understand, we want you to limit your answer previous to the 13th of August, 1906.—A. I think it was at the time of the Tate affair.

Q. You think it was?—A. Well, I am sure I had no feeling against the soldiers before that; no personal feeling.

Q. Was that the first beginning, or origin, of this feeling in your mind—the Tate affair?—A. Yes, sir.

Q. And that was when?—A. I don't remember the date; it was several days, I think, before the 13th.

Q. When did these other things you say you saw—when did they occur? They must have been after the Tate affair?—A. Well, I was sitting on my front gallery of my house reading, and would see these children of the neighbors gathering there and would see them scatter——

Q. The question is when?—A. I can't recollect the exact time.

Q. Was it before or after the Tate affair?—A. I won't be sure even about that.

Q. It might have been before?—A. I think it was after.

Q. Will you tell the court how many times you noticed the running of children from these soldiers?—A. Every time they were gathered together on the street and the soldiers came by.

Q. About how many, more or less; give us an idea?—A. Several times, I think.

Q. Half dozen?—A. I won't be sure.

Q. Might it have been more than that?—A. I hardly think so.

Q. It might have been less?—A. It was probably less.

Q. What's your best judgment, Mr. Dennett?—A. I think it was four or five times.

Q. And this occurred always right in the vicinity of your house?—A. Well, I was not very much occupied at that time; I spent most of the time at home; I did not go down town very much; if I did, it was just on errands.

Q. Was it, to the best of your recollection. in the vicinity of your house?—A. Yes, sir.

Q. Was that four or five times in the vicinity of your house you saw these small children running from the colored soldiers who were approaching?—A. Yes, sir.

Q. I think you said something about young girls running on the porch?—A. That was at the same time—small children and young ladies.

Q. The four or five times would cover both children and young ladies?—A. Yes, sir; the soldiers were not there very long, you know, and after the 13th they did not come out in town at all.

Q. How often did you hear them using this profane and obscene language you speak of?—A. Very often, when they passed the house.

Q. Give the court an idea; we want to know.—A. I can't remember.

Q. More or less?—A. A dozen or fifteen times.

Q. Was this all, as you recall it, at or near your house?—A. At, or as they were passing by.

Q. And they used the obscene language to whom? As there were only four or five times you saw the children run and they used the

obscene language, to whom was it addressed other times?—A. Just in conversation among themselves.

Q. Was not addressed toward anybody?—A. No.

Q. But on these other occasions, as I understand you, it was addressed toward the young girls and children, who ran up on the porches?—A. No, sir; that's not my testimony. I said in passing the house where the young ladies were on the porch after they passed by there they would use expressions amongst themselves.

Q. I understood you to say these expressions referred to these young ladies?—A. I presume they did.

Q. Do you know?—A. I so understood them.

Q. Will you tell the court why you thought they were addressed to the young ladies?—A. Because they were criticisms of females—reflections.

Q. Now, may it please the court, we want to ask the witness what these were—these expressions—you may remember, that were addressed toward these young ladies by these soldiers. There is no one in the court room that you can't use the language before.

At this point, it being 12 o'clock m., the court adjourned to meet at 10 o'clock a. m. February 18, 1907.

CHAS. E. HAY, Jr.,
Captain, Acting Judge-Advocate, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., February 18, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocate. The accused, his counsel, and the reporter were also present.

The reading of the proceedings of February 16 was dispensed with.

Mr. W. F. DENNETT was reminded that he was still under oath.

CROSS-EXAMINATION CONTINUED.

Q. In order to connect up your testimony, Mr. Dennett, I will read the last few questions and answers, so that you may know. (Counsel reads from record last questions and answers.) Were they addressed directly toward these young females that had run into the porches?—A. I said that the young ladies were standing on their front galleries. I did not say they were addressed to the young females who ran away. That was another occasion, sir.

Q. You mean to say they stopped on the street and markedly spoke to these young women on the galleries?—A. As they passed by the residence where these young ladies were standing on the gallery one of them remarked that he preferred the shortest, and then a dispute would arise amongst them, and another would say that he preferred the tallest, and another would say for his preference he would rather have another one. I do not remember the exact words they used. That was what their conversation was that I understood.

Q. Might they not have referred to bananas, for instance, instead of to women?—A. I did not so understand it.

Q. Might it not have so referred?—A. I can only tell you what I heard; you will have to draw your own inferences.

Q. You have also stated that it referred to these women; is that all you heard that would make you form that opinion?—A. I can not recall the exact words; that was the substance of what I heard; I was 20 feet inside my sidewalk sitting on my gallery; they were across the street. I understood it to be insolence; these were black soldiers and the ladies were white ladies.

Q. But you don't know positively that these black soldiers referred to any particular women of Brownsville?—A. I understood it reflections on those ladies; they looked toward them and seemed to be impertinent and insolent.

Q. Is there anything in the language you have used to this court that would make that positive that they referred to those young women?—A. I can tell you what I understood. Of course, under oath I could not say positively——

Q. It was solely from conversation, not their manner, that made you suppose they referred to these young women?—A. Yes, sir; in their manner and tone.

Q. What was in their manner that indicated they were talking to those young women?—A. I have lived in Brownsville about forty years and I have seen a great many soldiers, white and black, and I never saw anything of the kind before. It was decided insolence, in my opinion, sir.

Q. Is that all, the fact that you have lived in Brownsville forty years, that made you suppose they were addressing these remarks to those young women?—A. They were not addressing to those young ladies, but they were criticising them as they passed by.

Q. What was in the manner of these men that made you think so—aside from the fact that you had lived there forty years and that they were colored soldiers?—A. Their general conversation and actions. I could not suppose they were talking about anything else.

Q. I repeat it, what was in the manner of those men, directed toward those young women, that made you form that opinion at that time?—A. I could only understand from their conversation and from their actions that they were reflecting on those young women.

Q. You speak of manner and you speak of actions; what were their actions that made you think so?—A. Well, when the first one spoke he looked toward the young ladies on the gallery and then it seemed like a dispute arose between them as to which one was their preference.

Q. Did they do anything else besides one of them looking toward these young women?—A. They were all looking toward them as they passed by.

Q. Then because they looked toward them and made those remarks, you thought they were talking to those young women? Or about them, rather?—A. Yes, sir.

Q. How many times did you see that?—A. I think more than once; I think twice.

Q. About what date was that?—A. During the time the negro soldiers were in Brownsville.

Q. Before or after the 13th of August?—A. It could not have been after because they were not permitted in town after the 13th.

Q. None were in town after the 13th?—A. None that I know of.

Q. Then they were restrained by the commanding officer and his assistants from going into town after the 13th?—A. As far as I knew.

Q. Did you ever see any there?—A. Not that I know of. There were colored people in Brownsville, brakemen from the train and like that——

Q. I asked you about colored soldiers; I didn't ask about brakemen?—A. I didn't see any.

Q. Then they were restrained from going to town after the 13th?—A. As far as I know.

Q. Did you ever report any of these terrible acts to Major Penrose or his officers?—A. No, sir.

Q. Did you ever refer it to the police or the mayor?—A. No, sir.

Q. Did you ever take any official notice of it?—A. It was a matter of conversation after——

Q. Did you ever call this to the attention of any civil or military officers at Brownsville?—A. No, sir.

Q. It was not considered so serious before the 13th of August?—A. The reputation of the colored troops was already established and it was not necessary.

Q. Was this reported to any official, either civil or military, with a view of having it suppressed before the 13th of August?—A. No, sir. Their reputation was already established by themselves before the 13th of August in the city of Brownsville.

Q. Seemed to be. I want to get at how they established it. But you didn't take any steps to prevent this?—A. No, sir.

Q. It seemed to look a little blacker after the 13th?—A. These young ladies had a father and it was not my business to do those things.

Q. Did or did not these acts look a little blacker to you after the 13th of August; a little worse?—A. Naturally; after the shooting up of the town by the soldiers I was influenced to remember those things.

Q. You didn't testify before the Purdy committee or the committee of citizens, did you?—A. No, sir.

Q. Isn't there a lagoon just back of the officers' quarters at Fort Brown?—A. Yes, sir; separating the officers' quarters from the national cemetery at Fort Brown.

Q. A great place for fishing there, isn't there?—A. I don't know, sir; I don't suppose I have been there over three or four times in ten years.

Q. Then you don't know anything about citizens going freely through the post to get there?—A. My boys used to go down there and bathe.

Q. Did you restrain them from going down there from the 28th of July to the 13th of August?—A. No, sir.

Q. So that during that period of the occupancy of the terrible black soldiers you didn't restrain your boys from going through the garrison?—A. No, sir.

Q. Do you understand plats?—A. Yes, sir.

Q. Can you see that plat well enough to go up and point out where your residence is?—A. I can; yes, sir.

Q. Will you do so, please?—A. This is the corner I live on. (Indicates on map the corner on the west side of Adams street and nearest to the garrison—corner of Fourteenth and Adams.)

Q. You are just less than a block from Fifteenth street, is it not?—A. Just a block. I don't think Fifteenth street runs across here; it may, however, I won't be sure. There is nothing in here at all except the street—Fifteenth street and this garrison street are all together at the end of Adams street.

Q. How far is your house from what is known as the bad lands, there?—A. Well, sir, I don't know of any particular bad lands; this section of town here the poorer class of Mexicans live in.

Q. You are a block from that then?—A. I should think a little more than a block.

Q. How much?—A. If you are referring to where the poorer class of Mexicans live, they begin to live from here up; but, however, Brownsville has increased about 50 per cent in population these last two years, since the railroad built there. There has been a great scarcity of houses that could be occupied by families, and families coming there to settle in our town have necessarily had to take such accommodations as they could get.

Q. But you have been living there forty-one years, have you not?—A. Yes, sir.

Q. You spoke of the feeling in the town previous to August 13 against colored soldiers; didn't that commence about the time you first heard they were ordered there?—A. We heard bad reports of this——

Q. Did or did not this feeling against colored troops commence or manifest itself first about the time they were ordered there?—A. My feeling against them did not begin until after the Tate affair.

Q. I am talking about the general feeling of the people of Brownsville, of which you testified on direct examination. I want to know if that feeling didn't commence to manifest itself as soon as you heard the colored troops were ordered there for station?—A. Among all the people, I don't think so. There might have been feeling against the colored troops among people who had lived there a short while.

Q. Was not there a great deal of talk among the people and among all classes, of regret, etc., that the colored troops were ordered there to replace the white troops?—A. Of course, we would rather have had the white troops there.

Q. As a matter of fact, wasn't there a great effort made on the part of the citizens to prevent the stationing of colored troops there?—A. None that I know of.

Q. You never heard of the telegram Mr. Wreford sent to your Congressman to influence a legislation to prevent that?—A. No, sir.

Q. You are sure about that?—A. If I did it was just casually and passed from my memory.

Q. You mean to say that the feeling against colored troops was not so manifested that you never heard of it until about the time they arrived? Is that the impression you want to give us?—A. No, sir; the impression I want to give you is that the feeling did not commence until after the Tate affair; then we commenced to inquire into the record of this battalion and this regiment of troops.

Q. What did you find out was the record of this battalion when you went into it; commenced to look it up after the Tate affair?—A. If you will let me tell you hearsay I can tell you.

Q. You spoke of record; I did not ask for hearsay.—A. I meant

the record, of course; we heard from newspaper reports and conversation; I did not myself go into any records.

Q. Texas papers?—A. I don't remember.

Q. Was it Brownsville papers?—A. Brownsville papers; Galveston News, and other papers of that kind.

Q. Hadn't you seen any adverse criticisms of these troops previous to that time in your local papers; for instance in the Galveston News you read?—A. Really, I don't remember what I did hear.

Q. What is your best recollection? Did you read such comments in your local papers previous to the Tate affair?—A. I am not sure whether it was previous to the Tate affair or after.

Q. What's your best recollection?—A. I know that I began to read up about this——

Q. What is your best recollection? Did you or did you not?—A. We heard that the officers of this——

Q. What is your best recollection; did you or did not you read this previous to August 13, in your local papers?—A. I don't remember.

Q. Give us your best recollection; we are entitled to it.—A. I can't remember.

Q. Then you want to give us the impression that there were no severe criticisms in your local papers and the Galveston papers of these people previous to their arrival there?—A. I don't remember, sir; previous to the time of their arrival there?

Q. Yes; I said previous to the time of their arrival.—A. I can't recollect; I don't think there was.

Q. You want to tell this court positively, under oath, that there were not?—A. No, sir; I don't want to tell that.

Q. You started to say something about the officers; what was it?—A. We heard down there that when this regiment was ordered to the Department of Texas that the officers had protested to the Department about sending their regiment to Texas.

Q. And you read that in the papers?—A. I can't recall whether I did or not.

Q. Will you say you did not read it in your local papers?—A. No, sir.

Q. Did you ever hear any talk about raising a subscription to appoint a committee to go to Washington to prevent the stationing of these troops there?—A. No, sir.

Q. You never heard of it?—A. No, sir.

Q. Sure about that?—A. I can't remember anything about it now.

Q. You are sure there was no talk about it among the people or the press?—A. What might have happened among a few people I don't remember.

Q. Then it might have happened?—A. It is possible.

Q. Isn't it quite probable?—A. I don't think so; no.

Q. Were you on that committee of entertainment—of the press affair—while the other soldiers were there?—A. No, sir.

Q. You knew nothing about it?—A. No, sir; I didn't go out that night; didn't go to the—my sons were there, though.

Q. You testified about a citizens' mass meeting on the morning of the 14th; how was that brought about?—A. I was downtown on Main street, Elizabeth street, when word was sent to me that there

was going to be a mass meeting of the people of Brownsville, to try to investigate into the affair of the night previous, and there seemed to be a general movement amongst the people, and they determined to have it in the Federal court room of the United States building in Brownsville, and they all went up there and had a mass meeting.

Q. Pretty bitter feeling expressed in that meeting?—A. Quite so; yes, sir.

Q. And you formed a committee to determine to get to the bottom of it?—A. Yes, sir.

Q. And that was your purpose in waiting on the commanding officer?—A. Yes, sir.

Q. And your committee suspected him and everybody else, didn't you?—A. No, sir; we didn't think the commanding officer came out in town and shot up the town the night before.

Q. But you suspected him of not cooperating with you?—A. Afterwards we thought—we hardly knew——

Q. Did or did you not suspect he was not cooperating freely with you?—A. We thought there was not enough effort made; that if effort had been made at the proper time the culprits could have been found out.

Q. And you suspected him of not giving you fair opportunity to get at the facts?—A. I don't know——

Q. Did you or did you not suspect him, as a committee, and practically openly say that he was not playing fair with you?—A. I don't know what the opinion of the other members of the committee was; they never expressed themselves.

Q. I want to know the attitude of the committee itself?—A. The committee never expressed an opinion on that subject.

Q. As a matter of fact, didn't the committee receive a letter from Major Penrose, making certain offers of assistance subsequent to that time?—A. Major Penrose expressed himself to us, and I think, by letter also afterwards, offering to do everything he could——

Q. What was his offer?—A. To try to find out who did the shooting.

Q. Did he not, in substance, tell you that in view of your attitude, he was prepared to furnish all the evidence and give all the assistance possible to facilitate the efforts of a committee of three if you would appoint one? Tell you that on account of your suspicions, he would gladly throw open the gates and give all assistance possible to a committee of three, if you would appoint one?—A. As far as I can recall, I don't think he mentioned that, referring to our suspicions, in his letter. He offered to work in cooperation with the Citizens' Committee in trying to do everything he could to find out——

Q. Didn't he offer to do so in the first meeting?—A. Yes, sir.

Q. Then you suspected him, and he wrote this letter about the 20th of August; isn't that true?—A. I don't remember the date, and I don't remember the cause. I don't know the cause of his writing the letter.

Q. Didn't he ask you to appoint a committee to come to the post and make an investigation themselves, to satisfy themselves?—A. It might have been so.

Q. Wasn't it so?—A. I am not sure. The committee as a whole went to the garrison only once. After we returned to Brownsville we concluded amongst ourselves that we would leave the balance of the

investigation, in cooperation with the officers of the garrison, to a subcommittee. Whether that was at the request of Major Penrose, I don't remember.

Q. Didn't Major Penrose, in a letter addressed to the chairman of your committee, make some such offer; wasn't such a letter read to the committee?—A. I think there was a letter of Major Penrose read to the committee—one or more letters.

Q. Didn't he say in this letter that he would place before that committee every particle of evidence that he had secured himself and cooperate with them to obtain any further evidence they wanted?—A. I understood Major Penrose said——

Q. Did he, or did he not, make such an offer?—A. If you will kindly have that letter read in the evidence, perhaps I can recall it.

Q. We will do that at the proper time, but we want to know whether that was read to your committee and what impression it made on you? You were a member of the committee, and said such a letter had been read, and we want to know the impression made on your mind.—A. The impression on my mind was that Major Penrose promised us to work in cooperation with a subcommittee to try to find out the truth of the matter.

Q. Didn't he offer to place before you every particle of evidence he had and assist you in every way?—A. He offered to let the Citizens' Committee go down there and make personal investigations of the men themselves.

Q. Now, Mr. Dennett, you testified that you replenished your ammunition on the morning of the 14th; what became of the ammunition you had on hand previous to the 14th?—A. That night I looked for my ammunition and I found I only had ammunition in the house for a little .38 Smith & Wesson.

Q. How many sons have you?—A. Four.

Q. What are their ages?—A. My eldest is 22; the next 21; the third 20, and the youngest 17.

Q. You said you had a Winchester within reach while the soldiers remained; what other arms had you?—A. Twelve double-barrel shotguns; two .38 Colt revolvers, two double action .38 Smith & Wessons, and a small rim-fire pistol.

Q. What arms had your sons?—A. We used the arms all together, I am speaking of both, my own and theirs, and my youngest son had a small .22.

Q. This arsenal you describe then you had for the use of all? You speak of being around home most of the time; what time did you give to your real estate business?—A. I am the owner of real estate and I collect rents, and my real estate is for sale if I can get my price for it. That's about all the time I give to it.

Q. Give the names of some of the families you say moved to Matamoros.—A. Mr. Kowalski, our district clerk; Mr. Armstrong, a naturalist; Mr. Garza, a clerk of Mr. Yturria's, who I think is a witness for this court, and also this family of young ladies across the street.

Q. Is this Mr. Kowalski the same man who took all these affidavits of these terrible soldiers?—A. It was in Mr. Kowalski's office that Mr. Purdy had his investigation.

Q. Didn't he take these affidavits though?—A. I don't know, sir.

Q. Same man. Now, is this man Garza the sheriff of the place?—A. No, sir; Mr. Garza is a clerk of Mr. Yturria's private bank, I think treasurer.

Q. Do you know what kind of arms the police of Brownsville are armed with?—A. As far as I know they have pistols.

Q. They have no rifles of any kind?—A. I have never seen them use any.

Q. Do you know whether they have or not?—A. I don't know; no, sir.

Q. Do you know what the police of Matamoros are armed with?—A. No, sir.

Q. You know where the "firing line" is in Brownsville?—A. Are you referring to the place where they placed the guard after the 13th of August?

Q. I am referring to what you people call the "firing line." A. After the shooting up on the 13th?

Q. What do you people in Brownsville—what have you in Brownsville for a long time—called the "firing line?"—A. I don't know. I have never heard that, to make it a subject of inquiry myself.

Q. Is it or is it not a fact that firing is quite frequent at night in Brownsville?—A. It is not a fact.

Q. You are positive about that?—A. Yes, sir.

Q. I will ask you a little more specifically: from April to July, 1906, is it not a fact that firing in the city of Brownsville was very frequent at night?—A. I don't remember. There was some firing there, I think; I am not sure about the date.

Q. Now that I fix the date, you begin to remember. Now, isn't it a fact, I repeat, that between the dates mentioned, firing in Brownsville at night was a very frequent occurrence?—A. No, sir.

REDIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. You mentioned a short time ago the name of one Mr. Wreford, or rather it was mentioned; who is he?—A. Mr. Wreford is a commission man there, I think a broker and salesman; he represents houses and sells goods for them.

Q. Does he hold any official position in the municipality?—A. Not that I know of; no, sir.

Q. Was he qualified, on account of any official position, to represent the town?—A. No, sir.

Q. If he protested against the stationing of colored troops in Brownsville, was he acting as an ordinary individual, without authority?—A. As far as I know, sir, he represented himself only.

RECROSS-EXAMINATION.

QUESTIONS BY THE ACCUSED.

Q. Who is Mr. Culberson—Mr. C. A. Culberson?—A. I don't know. We have a Senator Culberson of the State of Texas.

Q. Did he make any protest against the stationing of negro troops in Brownsville?—A. Not that I know of.

The court then took a recess until 11 o'clock a. m., at which hour the members of the court, the accused, his counsels, the reporter, and the judge-advocate resumed their seats.

Mr. L. W. EVANS, a witness for the prosecution, was duly sworn and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please give your name and residence.—A. Lon W. Evans, Fort Worth, Tex.

Q. Where were you living on the 13th and 14th of August, 1906?—A. Brownsville, Tex.

Q. What was your occupation at that time?—A. State quarantine officer—that is, guard, under Doctor Florence and Doctor Taber.

Q. Will you please go to the map there and point out, as nearly as you can, your residence on August 13 and 14, 1906?—A. It is not on the map, Captain.

Q. Point out the approximate location. (Witness indicates on map.)

Q. Tell the court on what streets you live.—A. Corner Fifteenth and Jefferson.

Q. And Jefferson is how far from Adams street; how many streets away?—A. Really I don't know, Captain.

Q. One block, two blocks, six blocks?—A. I really could not tell you how far it is; I am not familiar with the streets there, only the street I live on and Main street.

Q. How long had you lived in Brownsville on August 13?—A. Ten months.

Q. And you are unable to find the location of your house on that map?—A. Yes; it is not on there.

Q. How far was your residence from Fort Brown?—A. Well, from the post fence—was only a street ran between the post fence and my back yard.

Q. What street was this?—A. Well, it was—really I don't know the name. I think they run by numbers; I think it was Sixteenth street.

Q. Did you have occasion to visit Fort Brown about August 13, 1906?—A. Yes, sir.

Q. With whom did you go?—A. Mayor of the city, Dr. Fred Combe, sir.

Q. What was the purpose of this visit?—A. I went down to the city and seen several of my friends and they advised me to go to the mayor in regard to an attack being made on my wife the night previous to this, the 12th, so I was advised to go to the mayor and get him to go to the major, as I was not acquainted with the major, so we did, at 5 o'clock in the evening of the 13th.

Q. State what occurred upon the occasion of this visit.—A. We got in a hack and went to the post, and the major was not at his quarters—was out taking his evening walk, and we overtaken him. The mayor introduced me to the major, and I stated my case to him. Told him——

Q. State just what you told Major Penrose and what he replied, as well as you can remember.—A. I told him my wife had been attacked by one of his men on the night before and that I did not know what to do about it. I had come to see him and see if we

could not find the guilty party and do something about it. He said he was very sorry that such a thing as that would happen—couldn't hardly believe it was one of his men did it, although he would do everything in his power to find the guilty party.

Q. Major Penrose, as I understood you to say, expressed doubt that one of his men had done it?—A. The major said that he couldn't hardly believe one of his men did this crime, because he said: "The negroes we have are picked negroes, and we don't allow any of that sort of people to join the Army, and I hardly think it was one of my men did it." I told him, Major, I was positive—that is, my wife was positive—it was, or I never would have come to you. She was real positive about it, and I was sure of the fact before I did come to you.

Q. State in detail just what it was you reported to Major Penrose.—A. I told him she had been attacked by this negro soldier on the night of the 12th about 9 o'clock, and I had went to see the mayor, and he come with me to you, and I would like for you to help me or do something to get this guilty party. Major says, "We will, Mr. Evans. If your wife at any time after she kind of comes to herself, if it is in a day or two days or a week, and can remember anything about him—how he was dressed or if there was any peculiar tie or anything that she can identify him by—please let me know and I will do everything in my power to hunt him down and punish him; turn him over to the authorities, and after they are through with him punish him myself."

Q. Was this Major Penrose the same as the accused?—A. Yes; this is the major; yes, sir. Major talked very nice to me, very nice, and he told me he would do everything in his power. Then Mayor Combe and the major stepped off a little piece from me and had a little conversation. Of course what they said I don't know; it was out of hearing distance. Talked the matter over.

Q. You say that the alleged assault was committed about 9 o'clock on August what?—A. Twelfth.

Q. When did you first officially report this assault to anyone?—A. To the major?

Q. To anyone.—A. Early next morning, just as soon as I could go downtown. I could not leave my wife that night; she would not let me leave her. I went to Doctor Florence next morning first, quick as I could, and got him, and he went out to see my wife, and then it was all around town in a very little time—little while.

Q. To whom did you report?—A. I reported it first to Doctor Florence and Mr. Creager and some other gentlemen standing on the street—I can't recall now—and Mr. Creager says: "Now, Evans, just keep cool; leave the matter with us; we will adjust that; I know the major; I will go call on him in your behalf," and I think he did. This was about 9 o'clock.

Q. Why was it that you yourself did not go to Major Penrose until 5 o'clock the next afternoon?—A. The mayor, I went to see him about 11 o'clock and asked him to go with me to Major Penrose, and he says, "I am very busy and can't go now, but I will go with you, Evans; we have time to attend to this matter, and I am very busy with some patients;" and so in the afternoon I went to the mayor again, and he was still busy; he put me off again. Of course, they told me this: "For you to go to the major it wouldn't do; you ought to have some

official, city official, to go with you; it would be better." The citizens of Brownsville told me, "It will be better for you, because the major will naturally give you more attention, probably, if you have some official with you." Therefore is the reason I didn't go by myself. I wanted to, and was going to, but they advised me not to; I didn't know what to do.

Q. Where were you on the night of August 13, 1906?—A. August 13? I was at home; after 9.30 I had to meet the Matamoros train to see that there was no strangers coming over from the interior, such as Vera Cruz and Progreso, two places. We were quarantined against them. I went straight home.

Q. Did anything unusual occur upon this night? If so, state fully all that you heard or saw.—A. Yes, sir; about—really I don't know the exact time, but I was awakened—shooting—and I thought it was fire in the post.

Q. What made you think it was fire in the post?—A. Heard the shooting down toward the post.

Q. What was the nature of this shooting?—A. Well, I don't know anything about the shooting—all I know I heard the shooting.

Q. That's what I am trying to get at. What did it sound like; was it one shot or five thousand?—A. No, sir; no five thousand, but there was several shots fired. There was some 10 or 15 shots fired at the first; the first shots seemed like 10 or 15; of course a man waking up—I really could not state exactly how many, but it seemed to me like a second or two or probably longer than that before there was any more shots, and therefore is the reason I thought it was fire; and I was the only man in the house, and my wife and Mrs. Byrom and Mrs. McClain—had half of my house rented to them—and they became frightened and after the shooting continued, and we went over to Mrs. Eggley's, an old lady and gentleman right across the street, lived there; there we remained until after the shooting. I remained over there a couple of hours; I could not get my wife and the ladies to go back to the house before that, but we finally went back home.

Q. Did you see anyone outside of the persons you have just mentioned about the time of this firing?—A. I only saw one man.

Q. Describe this man, as nearly as you can, to the court.—A. He was a man as tall as I am——

Q. Which is how tall?—A. Six foot, one. He was dressed in the uniform—soldiers' clothes—coming down—he came the first time—well, my wife saw him first and called my attention to it—she was standing at my side; I was at the front gate of Mr. and Mrs. Eggley's, and he come off of Thirteenth street down Jefferson street by this front gate that I was standing, and as he got to the corner he went right in the middle of the street and straight to the post fence. He was a nigger, black, very dark. Carrying a gun in his left hand.

Q. At what gait was he moving?—A. He was going pretty pert.

Q. Running?—A. No, sir; he was not running, but he was walking very fast. Every once in a while kind of jumping along, you might say he would run a little piece—jump, something like that—I don't know—he was walking very fast.

Q. To the best of your recollection, how long was this after those first shots you heard?—A. After the first shots—it must have been at least thirty or thirty-five minutes; my best recollection.

Q. Did you hear a bugle call?—A. Yes, sir; I heard the bugles; I am not familiar with them; I don't know any——

Q. Do you remember whether or not these bugles sounded before you saw this man or after?—A. All of them sounded before. There was nothing after this man passed; there was not a shot fired, or a bugle, or nothing. I never heard a thing; it was all quiet; I never heard another shot.

Q. Can you describe accurately the dress that this colored man wore?—A. He had, as I stated, I believe they term it a khaki uniform; it was a light uniform. I don't think, I really don't know, whether he had on leggings or boots or what; I was looking at his main body and his face.

Q. Did he have on a blouse or not?—A. A coat, you mean?

Q. Yes; a coat.—A. Yes, sir; he had on a coat.

Q. And you think he had a gun in his hand?—A. I know that he had a gun in his hand. I could have put my hand on him very easy, I was that close to him.

Q. About how far away were you from him when you saw him first?—A. He passed within 3 feet of me. I was standing behind a rosebush with my arms on the 2 by 4 of the fence pickets—picket fence—and I am satisfied I could have touched him as he went by me easily. He never did see me.

Q. Could this man have been a Mexican?—A. No, sir, Captain; he couldn't have been a Mexican. I am positive he was a negro. I was there ten months, and I don't think, with the one exception, I never saw a Mexican the whole time I was there, and I was in Mexico a good deal—had business over there—that was as tall as this man; never at no time saw a Mexican that was as tall as he was.

Q. Who were your immediate neighbors at that time?—A. Mrs. Eggley—Mr. and Mrs. Eggley and their daughter—she was a school teacher there in the public school. Mr. Dickey, he was a reporter for a daily paper there. Mr. Frazier, he was owner of the one laundry we had there at that time—is yet, I believe. Mr. Garza, next door, a Spaniard, he is one of the most prominent merchants there. The balance is Mexicans. I didn't know them; didn't know their names; didn't know anything about them.

Q. How many families resided in the same block in which your house was on the night of the 13th of August?—A. None at all. The block—yes, sir; I think Mrs. Leahy's house occupies just half of that block.

Q. Mrs. Leahy's house was your residence at that time?—A. Yes, sir; there is an alley runs between me and Garza, and Garza and the store were—that's a block, yes—so there's just Garza and his store on the corner.

Q. After you reported the alleged assault upon your wife to Major Penrose on the afternoon of the 13th, do you know what Major Penrose did?—A. No, sir.

Q. When you left him, at what part of the reservation was he?—A. He was near the guardhouse, you call it, I believe, where the prisoners—he was something close to that place, I am not very sure; I have never been in the post very much.

Q. Is that approximately the same place where you met him?—A. Yes, sir; I met him there and left him there. He told me he would step right over to this—I believe, guardhouse, if I am not

mistaken, and give this order, no one should be allowed out of the post. He says, "I will"—the mayor asked him to do this, as the feeling—and he said, "I certainly will; I will go right there now and issue an order that no one will be allowed out after 8 o'clock, and if anyone is out I will bring them in."

CROSS-EXAMINATION.

QUESTIONS BY THE ACCUSED.

Q. You have not testified before any of these—either before Mr. Purdy or the committees of the citizens, have you?—A. Not one, Colonel, no, sir.

Q. This is the first time you have given any evidence about this at all?—A. Yes, sir.

Q. You are living where now, Mr. Evans?—A. Fort Worth. Dallas is my home; I was raised up there.

Q. Now, what had you been doing the night of the 12th, Mr. Evans, you yourself, up to 9.30?—A. Yes, sir. I was on the Matamoros train, my wife and I, coming out of the Republic. The time is different from our time—forty-five minutes—the train comes in over there 8.40, I think it is. I came on in on this Matamoros train; got off and came across to the ferry and I met Mr. Larry, and he was riding my wife's pony, and as we came across he says, "Mrs. Evans, I know you are tired, just get on the pony and ride down to the house and Lon and I will walk." She told him no she would walk along with me. He said, "Now I know you are tired;" insisted on her getting on, and so I helped her on. She got on the pony sideways and rode on up to the house and got off and led the horse in, and this back step is where she was attacked.

Q. You had not arrived at the house at that time?—A. No, sir; I was ten minutes behind her, walking.

Q. So it occurred while you and this Mr. Larry were walking from the depot to this place?—A. Yes, sir; from the Government—from the ferry.

Q. You really know nothing about this of your own knowledge?—A. No, sir.

Q. All you know is what your wife told you?—A. That's all.

Q. Tell this court, will you please, just who lived in that house with you—in your own house.—A. Mr. and Mrs. Byrom and Mr. and Mrs. McClain; he's express messenger for the Brownsville road. Mr. Byrom is artesian well and oil well contractor for a big syndicate in Mexico City, out about 150 miles from Matamoros—could not keep his wife out there; he left her with me and my wife.

Q. He was not living there with you at the time?—A. Just his wife. He would come in about twice a month—always once a month—to make up his pay roll; the money was placed in the bank in Brownsville to pay his men off.

Q. Any servants in the house?—A. At this time?

Q. Yes.—A. I believe there was. Mrs. Byrom had a servant.

Q. Do you know who he or she was—the servant was?—A. She had two servants at two different times, and one was a Mexican and the other was a negro woman, but I don't know either of their names, and I don't recall now which one she had at this time; I believe it was the negro girl.

Q. Do you know what her name was?—A. I have heard it lots of times, but I can't call the name now.

Q. Was anybody else in the house, any children?—A. None at all; no, sir.

Q. Did anybody, as far as you know, see this assault, besides your wife?—A. I think not. Mr. McClain got to the door as quickly as he possibly could when he heard my wife scream.

Q. He was the man who was in the bath?—A. He was in the extreme back room taking a bath, the ladies was in the front room, a bright light burning, all the doors was open but I had the house screened myself, it was well screened and well latched.

Q. How many entrances to your place, Mr. Evans? I mean from the street or alley?—A. There is two back doors, there's three back doors, and two front doors, and one side door.

Q. From the street, I mean; was there any fence around the place?—A. Oh, yes; a good fence, high fence.

Q. All around the place?—A. All around the place, a good fence.

Q. The house didn't stand right on the street or alley at any point?—A. No, sir; the back end of the house, the kitchen, back room, runs up close to the fence.

Q. Is that the place where you were informed this assault took place?—A. It was at my back door, the furthest door from the alley.

Q. Inside or outside of the fence, do you know?—A. Inside of my back yard, inside; 20 or 30 feet from the fence.

Q. Right at the back fence, was it?—A. Yes, sir; right at the back steps.

Q. Was there anybody present when this was told to you by your wife?—A. Yes, sir.

Q. Who was present?—A. Mr. and Mrs. McClain and Mrs. Byrom. They had taken her in the house, and when I came in she was lying in Mrs. Byrom's bed——

Q. That's all hearsay. I don't want to know what they did; I want to know just who was present when your wife reported it to you.—A. Just those three people.

Q. Nobody else that you can now recall?—A. No, sir; there was not anyone else in the house.

Q. Now, where were you all next day?—A. I was in Brownsville the next day.

Q. Did you go home for lunch?—A. Yes, sir.

Q. How long did you stay there?—A. I stayed at home about two hours.

Q. For lunch, eh?—A. Probably two hours and a half.

Q. Where was this doctor when you sent him out to see your wife?—A. In his office.

Q. Where is that place?—A. George Putagnet's drug store, on Main street.

Q. Can you tell us about what time of day this was that you left your home and went up and saw the doctor?—A. It was between 7 and 8 o'clock.

Q. That's by your own time, you mean?—A. Yes, sir.

Q. Then who was present when you saw him?—A. No one in the office.

Q. Now, you spoke of speaking to Mr. Creager; where was he?—

A. He was at the Brownsville train, leaving Brownsville; it was my duty to be there at all trains coming and departing.

Q. Leaving Brownsville?—A. At 9.45 I think was the time then. I think it has changed time since.

Q. Then you talked this over at the depot with him at 9.45?—A. Yes, sir.

Q. Where was this train leaving for?—A. At that time I think it ran to—it goes to Corpus Christi, I know that far; but the road was not yet completed that goes into Houston. I don't know just how far up the train went at that time.

Q. Who was present at this conversation; do you recall?—A. No one at all; him and I was sitting in the depot; there wasn't anyone in hearing distance I don't think.

Q. He told you at that time that he knew Major Penrose, did he?—A. Yes, sir.

Q. And that he would go up and see him about it?—A. Yes, sir.

Q. Now, you went up with Major Combe, as you say, about 5 o'clock; can you recall all the conversation that occurred between you and Major Penrose? Have you stated substantially all of it?—A. I think I have; yes, sir; I have.

Q. Did you recall Major Penrose asking you to describe the man or what description you could give of the man?—A. Yes, sir; I believe I stated that.

Q. I don't recall it. What did you tell him was the description you had of the man that was supposed to have done this—I mean the man who is alleged to have assaulted your wife. What description did you give Major Penrose of him, do you remember?—A. Yes, sir; I told him he was a tall, dark negro, dressed in full-dress uniform of his soldier's uniform. That's about all I believe I could tell.

Q. Do you remember what Major Penrose said in reply to that?—A. Yes, sir; he says, "Can't your wife give me some idea about—was there any mark or any way in the world we could get at this man?" and I says, "Major, I don't think she can."

Q. Do you remember the major saying anything to you in substance that he had a great many large, dark men and that it would be difficult to identify him without any distinguishing marks—that in substance?—A. Oh, yes; we talked that.

Q. Is that substantially what Major Penrose told you when you described him as a dark, tall man?—A. He did. He told me, "We have several of these; nearly all of our companies, our troops here, are large, tall."

Q. And it was in that connection then that he told you that when your wife could describe this man or give something, if you would let him know he would take it up and help the civil authorities punish him and when they were through he would punish him himself?—A. Do all in his power he could for me.

Q. Did you hear any of the conversation that passed between Major Penrose and Major Combe when they walked off apart there?—A. No, sir.

Q. Then the first thing you heard was when they came back and Major Penrose said he would go and give that order now?—A. Yes, sir; he did.

Q. Now, is that all you can recall about that, that when they came back Major Penrose said he would go and give that order?—A. That's

about all in regard to the case. Major, I believe, talked a little with me, but nothing about that.

Q. What was Major Penrose's manner, Mr. Evans, when you told him about this thing?—A. He seemed to be very pleasant about it, and hurt over the matter; he was very sorry.

Q. Expressed sincere regret?—A. Expressed sincere regret.

Q. Did he indicate to you that he knew of this before in any way? That it had been reported to him before?—A. Yes, sir; I believe the Major said——

Q. What did he say?—A. Told me that he had heard of this.

Q. Are you sure about that, Mr. Evans?—A. I am not positive about that, but I think the Major says: "Yes, I heard of it, Mr. Evans; very sorry." I think that was the reply he made.

Q. Isn't it a fact the Major was pretty well surprised when you told him about it, Mr. Evans? We are very anxious to get your best recollection on that.—A. Yes; the Major was.

Q. Very much surprised?—A. Very much surprised.

Q. Then, if the Major was surprised, aren't you mistaken about him saying he had heard of it before, because he could not be surprised if he had heard it, could he?—A. I don't know whether I said it before. The best of my knowledge, I thought that was what the Major said to me. As I stated, I am not positive.

Q. Now, Mr. Evans, didn't you tell Major Penrose at that very same conversation about the men congregating around your house and indulging in offensive language?—A. Yes, sir; I spoke to the Major about it.

Q. What did he say about that? Do you remember?—A. Yes, sir; I told him about the boys on two or three different occasions. I think it must have been about pay day, or something. They was passing and drinking a little. They always went down the back way, which never did bother me at all. But these negro boys come by the front gate and used some pretty bad language, and Mrs. Byrom occupied the front room, and my wife and I did not hear the first starter of it. She called me (Mrs. Byrom), so my wife got to the door first, and I went out and told them: "Boys," I says, "there's no need of any such language as this. I know you have been better raised than this, and please go ahead and don't use that around here—ladies here—a lady in the front room sick." Mrs. Byrom was sick. Well, they abused me pretty badly, but they went on down the street. One of them, or one or two—I remember one saying, "Oh, come on, Buck; don't curse the ladies that a way." Called his name Buck.

Q. What did Major Penrose say to you when you reported that to him?—A. I told him that, in regard to this, and he said—I says—"I was thinking of coming to you about it, Major, but I couldn't; I was called out of town, and while I am here I will explain it to you," and so I did, and I said, "I will be compelled to move; I can't stay there if that keeps up." "Well, Mr. Evans," he said, "you won't have to move; I will see that you don't. You can remain where you are, and I will see that you are protected if I have to put a guard there around your house." That's what he told me; but I moved next morning.

Q. You did move next morning?—A. Yes, sir; moved the next day or the day after—anyhow I moved in the next day or so—moved away. I know I was paying rent on two places.

Q. In so far as that part is concerned, he said he could handle it and would see that you were not further annoyed, if he had to put a guard there?—A. That's what he told me, and I thanked him and we parted.

Q. Oh, coming back to that interview, where you and Major Penrose and Major Combe were together, you have said that Major Penrose expressed surprise when you reported this thing to him; did he say anything to you at this time; ask you why you had not reported this to him before?—A. Yes, sir.

Q. You remember distinctly of his having asked you why you hadn't reported this before; tell us what he said.—A. He said, "Mr. Evans, I am very sorry, indeed, that you didn't come to me immediately when this happened." Said I, "Major, I couldn't leave my wife then; she never come to for some minutes, and after she did she wouldn't let me leave her; really, I didn't know who to come to; I didn't know you, I am not familiar with the officers—soldiers; I was never with them, and know nothing about them until I went there; didn't know anything about them at all, and I didn't know what to do."

Q. Do you remember whether you told him anything at that time about waiting to get an official of the city, Major Combe, to come with you? Do you remember whether you said anything about it at that time or not?—A. Yes, sir; I told him, and I says—after I waited until morning, couldn't leave my wife before that—I says, as I stated before, I was advised by the citizens to get some official to come before you, thinking it would be better; have more prestige.

Q. Now, you have given substantially all of this conversation, as near as you can recall it. Did you hear Major Combe telling Major Penrose anything about the conditions downtown?—A. Did I hear Major Combe——

Q. Telling Major Penrose about the conditions downtown?—A. Yes, sir; he did. He told him that the feeling was a little high in regard to this, and "Major, I wish you would take steps to hold the men in check for a few days until it kind of quiets down." The major said he would.

Q. And then the major said he would go off and give the order right away?—A. Major said he would do everything in his power to assist us in any way, and assured me if I needed him at any time, or could at any time identify this party, to let him know. Was very sorry that I could not come immediately after this happened and report to him so he could make some call; I believe call them together, I think is the way he put it to me. If he could have called them together right then and there, he could have seen who was out.

Q. Didn't he express to you by words and actions that this was the first time he had heard it?—A. The first time he had heard of my wife being attacked? Well, really, I don't know; he might have done it. I can't recall now whether the major did or not.

Q. Did he express to you that if he had known it sooner he might have had a better chance to identify this man?—A. Oh, yes; he told me, "Had you come to me immediately after this thing happened, the chances are we would have the man right now, because I can call my men together immediately and tell just who's out." He explained that to me. I didn't know it before. I didn't know the major, though; didn't know he was in command, I believe. I didn't

know who to go to. I appealed to the city authorities, but I didn't get any satisfaction.

Q. Do you know anything about the whereabouts of these other people that lived in your house at that time, now?—A. Mr. and Mrs. Byrom are in Mexico somewhere, I don't know; that is, they was the last I heard of them. Mr. and Mrs. McClain, I don't know. He told me he was going to be removed to Houston. I don't know whether he did or not.

Q. You don't know of your own knowledge anything about them?—A. No, sir; I do not.

Q. Now, we would like to go into this shooting a little bit with you, Mr. Evans. You say the first shooting that wakened you up was some 10 or 15 shots?—A. It sounded to me, you know—a man waking up—we don't know; I can't tell.

Q. But that's your impression now?—A. Yes, sir; that's my impression. It sounded to me like it must have been—it might not have been so many; I don't think there was over that.

Q. Then it was only a few seconds until you heard some more shots?—A. Yes, sir.

Q. Now, how long after that until you heard the bugle call, or before that?—A. It seemed to me like they was calling all the time. There was one way down in the post sounded like a distressing signal—I am not familiar with those things.

Q. You know the sound of a bugle don't you?—A. Yes.

Q. What's your best recollection of the time that elapsed from your hearing the first shots until you heard these bugle calls?—A. Right immediately afterwards.

Q. Right immediately after these 10 or 15 shots?—A. There was this call; yes, sir.

Q. Was that repeated by a number of bugles would you say?—A. Yes, sir, it was; there was several bugle calls. Bugles blowing, I don't know what for—nothing about it.

Q. We don't expect you to have expert knowledge of that, but we want the time, as near as you can recall it. How long did these keep up, would you say?—A. Really, I don't know.

Q. But there were a number of them?—A. Yes, sir; while the shooting was going on.

Q. Could you hear what was going on in the post, aside from the bugle calls?—A. No, sir.

Q. Now, you went across then; how long after those first shots was it before you went across to this other house—what's the name, Mr. and Mrs. Eggley?—A. Mr. and Mrs. Eggley.

Q. How long after these first shots until you went over there?—A. Just as quick as we could dress and go over.

Q. And you went over there and went into the house right away?—A. Yes, sir.

Q. Give us your best judgment as to how long that would take you to go from there—that is, to dress and go over there?—A. There was not much dressing done.

Q. I know, but what I want to get at is the time.—A. It was a very short time; I don't know how long it was, but there was not very much shooting after we got over there, I know that. The shooting soon ceased after I got the ladies into Mrs. Eggley's and placed them.

Q. How long was it after you got over there until you went out in the yard, Mr. Evans?—A. Well, I never did go in the house. I went up on the front gallery—well, I did step inside the door and see the ladies in. Miss Eggley, she taken them in her room; she was already up and standing at the fence and hollered at us after we got out.

Q. Your houses face each other, do they?—A. Well, no, sir; my house faces Fifteenth and her's faces Jefferson, running north and south.

Q. She, then, is right across the street from this brush factory—isn't it on the corner there of Jefferson and Fifteenth?—A. There's no factory.

Q. Garza's store, I mean.—A. Oh, Garza's store; well, her back yard would be in front of his; yes, sir.

Q. I want to get at now, as near as I can, about how far you had to go.—A. Just across the street.

Q. What street?—A. Fifteenth.

Q. Did that take you into their back yard or front yard?—A. We went around into their front gate.

Q. I wish you would show us on the map, if you can, how that is. You can take any block and show us, don't you know; it makes no difference.

(Witness steps to map.)

Q. Where would it be on the map; would it be on this corner here? What's on the west side of you?—A. A little bit of a store on the corner, an old gentleman and his son from New York is running; not what we call a paint shop, but remodeling furniture. (Witness here indicates that he lives on Fifteenth street, house facing that street, and that on the corner of Fifteenth and Jefferson, on the west corner, is an old furniture store, and east of that his own residence.)

Q. Now, then, do I understand that you came out of your house and around on Jefferson street entrance to Mrs. Eggley's?—A. Yes, sir; we came out the front door, right across Fifteenth street, and right around here, and went in to the front gate.

The court then took a recess until 2 o'clock p. m., at which hour the members of the court, the judge-advocate, the accused, his counsel, and reporter resumed their seats.

CROSS-EXAMINATION of the witness, L. W. EVANS, continued, after the witness had been reminded that he was still under oath.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. Mr. Evans, for just one moment we will go back to the interview that you had with Major Penrose when you were in company with Major Combe—went out to tell him about the trouble about your wife. I want to ask you one question: When Major Penrose asked you why you hadn't reported this before did Major Combe, the mayor, say anything?—A. Yes, sir. The mayor spoke up in my behalf, and says, "Major, I really am to blame, I guess," or "Will bear the blame for not coming down here sooner," or something to that effect. He says: "I was busy in the forenoon and after lunch I was also very busy; he came into my office and some gentlemen friends—some citizens—were in there, and I told him I would get off as quick as I

possibly could and would be glad to go with him, and therefore I was detained."

Q. That is substantially what Major Combe said at that time?—A. Yes, sir.

Q. Now, then, we will go back where we left off this morning. You had then gone over to this neighbor's house, Mrs. Eggley's. How long did you remain out there in the front yard, Mr. Evans; do you remember?—A. Well, in the yard, I suppose that I remained about twenty or twenty-five minutes on the gallery; I sit down afterwards.

Q. Well, I mean right in the yard?—A. Yes, sir.

Q. That was behind the rose bush, as you described this morning?—A. Yes, sir; I don't know just how long it was; it might have been longer.

Q. How long had you been there when this man you identified as a negro, with a gun, came up?—A. I hadn't been there but just a few minutes; I don't know how long.

Q. How long was that, would you say, from the time you first got up—I think you said—I have got a memorandum—you said thirty or thirty-five minutes in your direct examination; you said it must have been thirty or thirty-five minutes. As I understood, it was thirty or thirty-five minutes from the time the shooting first began?—A. Yes, sir; I don't think it was any longer than that.

Q. How long since the shooting had stopped when you saw him go by there?—A. Well, I don't remember about how long it was, but it was a very short time.

Q. A short time after the shooting started?—A. Yes, sir; five or six minutes, probably, I think he came running by.

Q. Now, Mr. Evans, is there a light on Jefferson street corner—corner of Jefferson and Fifteenth, where you are?—A. Yes, sir.

Q. Was it on the corner in which Mrs. Eggley lives, or on what corner?—A. The light is on the opposite corner.

Q. Diagonally opposite, or across Fifteenth street side?—A. Right diagonally across the street from Mrs Eggley's.

Q. Diagonally across?—A. Yes, sir.

Q. There was a light also on Jefferson and Fourteenth street corner?—A. Jefferson and Fourteenth; yes, sir; there is a light on Fourteenth and also on Thirteenth.

Q. Now, you said you saw this man coming—he was coming down Jefferson, as I understood you this morning?—A. Yes, sir.

Q. That is, from town?—A. Yes, sir; and he turned off Thirteenth around the corner.

Q. Did you see him yourself when he turned off Thirteenth; those two blocks away, you know?—A. That is two blocks away, just as he was crossing the street, and he was about middle ways of the street when I saw him.

Q. Tell the court what street you mean?—A. Jefferson street; my wife saw him right on the corner.

Q. When did you see him with respect to Fifteenth street; how far was he from Fifteenth street when you first saw him?—A. He was two blocks.

Q. And did he come at this gait that you describe—making fast and sort of jumping leaps?—A. Yes, sir; he did.

Q. Nobody else with him?—A. Not a soul; just he alone.

Q. Will you tell the court about how long this was after you heard

the bugle call? We want to get it fixed with reference to that.—A. How long after the bugle call that I saw this negro?

Q. Yes. You stated you heard the bugle calls almost immediately after the first shots that aroused you?—A. Yes, sir; it seemed like they all had ceased. If there was any calls I never heard them.

Q. If it was thirty to thirty-five minutes from the time the shots first went and the bugle call went right after it, it was more than thirty minutes when you saw this man coming back, wasn't it?—A. Oh, yes.

Q. About how long would you say after the bugle calls was it until you saw this man?—A. I don't know how long it was, but it was probably some five or six or seven minutes, because the shooting had ceased, and I hadn't heard any bugle calls after the shooting.

(The reporter read the last answer at request of counsel.)

Q. Where was he when you first noted he had a gun in his hands?—A. He was right opposite me.

Q. You didn't detect that until he came right up to you?—A. No, sir; he was coming right down by the side of the fence, and the gun in his hand was next the fence, carrying it down by this side. He had the gun about middle-ways like, behind the hammer.

Q. Describe that night.—A. It wasn't pitch dark. It was a starlight night.

Q. There was no moon?—A. No, sir; no moon.

REDIRECT EXAMINATION.

QUESTIONS BY THE JUDGE ADVOCATE.

Q. When you returned to your house, approximately about 9 o'clock on the night of the 12th of August, and saw your wife, did she exhibit any marks of physical violence?—A. Yes, sir; and has until this day.

Q. Describe them to the court, please.—A. The hair of her head, right around the ear—well, it is not down close to the ear, but just a little above there—you can see it is a little bald place there where he pulled her hair partly out, and it is ragged there. The hair is growing out. It is 3 or 4 inches long now.

Q. You made mention of the phrase "full-dress uniform" this morning in connection with the man who committed this assault. What do you mean by "full-dress uniform?"—A. Well, you wouldn't call it full dress, I don't suppose, but it was the regular form of uniform that they wear on the streets.

Q. And by full dress you simply mean complete uniform?—A. Complete uniform; yes, sir. Not full dress; I don't mean that.

Q. There seems to be a slight conflict in your testimony. You say at one point that Major Penrose evinced some surprise when you reported this alleged assault, but have you not a recollection of Major Penrose saying that he had heard of this before?—A. Well, it is hard to remember all these little things.

Q. But is there not now an impression in your mind that he did say that he had heard of this before?—A. I have been under the impression that the major spoke something of it, but just what I don't remember now, but I was under the impression that he said something to me in regard to that, as he had heard it in some way, probably not reported to him officially by the Brownsville people. I was under the impression, as I stated; I am not positive.

Q. But you carried away from the reservation an impression that Major Penrose had heard of this before you told him?—A. As I stated, I was under the impression, thinking all the time that he said something to me in that respect, but just what it was I don't remember. I went right straight to the point with the major.

Q. Now, you stated that you met Mr. Creager at the station just prior to the departure of the train for Corpus Christi that morning?—A. Yes, sir.

Q. Did Mr. Creager leave on this train?—A. No, sir; Mr. Creager went back up town with me and some other gentlemen, all of us walking together.

Q. I don't want hearsay. I want to know if you know Mr. Creager was down there?—A. Yes, sir. It is a new road; there are only two trains a day, one going out in the morning and one coming in in the evening at 5.30, and it is customary that everybody there goes to the train to see who leaves, and in the evening everybody is there to see it come in; it seems to be new to them.

Q. As I understand you, then, Mr. Creager followed out the bent of his natural curiosity of wanting to see the train come in or go out?—A. Nearly all the business people in that town they mailed their letters on the train and go down to see who leaves.

Q. Where did you part with Mr. Creager upon that morning?—A. Right at the corner of Elizabeth and the street coming up from the depot. I don't know the name of it. The bank is right on the corner; it is the main business part of town.

Q. Please tell the court what Mr. Creager then did, if you know.—A. No, sir; I do not. I think he went to his office. He assured me he would attend to that for me and made an appointment with me, but some way, and just how I don't know, we got separated, and I never did meet him. Therefore I went on home.

Q. Was Mr. Tate at the train that morning?—A. I believe he was; yes, sir.

Q. Mr. Tate has a train habit, has he?—A. Exactly like the balance of them.

RECROSS-EXAMINATION.

BY ASSOCIATE COUNSEL FOR THE ACCUSED.

Q. Mr. Evans, from whom did you first hear of this alleged assault upon your wife?—A. Whom did I first relate it to?

Q. From whom did you first hear of this alleged assault on your wife?—A. When I got home, as I stated; I was about ten minutes behind her—I was afoot and she was on horseback—and I started into my front gate and I met, just inside my gate, a policeman—a Mexican policeman—and he started to tell me something about it, and they hollered for me to come in the room and I went in the room and my wife was laying on the bed unconscious. Mrs. Byrom told me, as near as she could, all about it.

Q. Did you have any conversation with your wife just shortly after you got in the house?—A. Yes, sir; I did. First, my six-shooter was laying on my desk in my room; I grabbed it and ran out in the back yard and began a thorough search all around and in my barn to see if I could see, find, or hear anything; I afterwards asked the policeman to go with me, but he didn't go.

Q. Just relate as definitely as you can this conversation that took

place with your wife—the first conversation you had about this matter?—A. I asked her if she could describe him, and then and there at first she couldn't say much; she was crying and taking on and she couldn't say much, and was very much excited. After she did come to, and I hadn't bothered her very much, all she could say was that he was a tall negro dressed in soldier clothes.

Q. Was anybody present at this conversation?—A. Mrs. Byrom and Mrs. McClain and Mr. McClain.

Q. Did you express any doubt of this story as told you by your wife?—A. No, sir.

Q. Did you advise her as to any probable cause of it having occurred?—A. No, indeed; I never. There was no cause whatever. I never thought of such a thing.

Q. Did you tell her her hair might have got caught in a mesquite bush?—A. No, sir.

Q. When did you make this first examination of the injury that your wife is said to have received?—A. She complained of her head hurting her and says "He got me by the hair." Her hair was all down. He also got her in the top of her head. She thinks he was grabbing for her throat.

COUNSEL FOR THE ACCUSED. We don't want what she thinks.

Q. Did your wife go about attending to her household duties the next day the same as usual?—A. No, sir. Yes, sir; I believe she got my supper.

Q. Did you make any visits around town the following day to attempt to find a house in which to move?—A. Yes, sir.

Q. Did you spend the principal part of your day in doing that?—A. What time I could be away from her, I looked for a place to move.

Q. Did you find it?—A. I believe I found it that day. If I didn't, I did the next day. Mr. Goldhammer said, "I have a house that isn't finished. I am building three, and one of them is very near completed, but if you like you are perfectly welcome to move into it," and I thanked him, and I moved the next day, and it was a month afterwards when they finished it.

Q. Isn't it a fact that you did move into another house on the 14th day of August?—A. Really, I don't know whether it was the 14th or the morning of the 15th. I believe it was the morning of the 15th.

Q. Your wife assisted in this moving, didn't she?—A. No, sir; she just simply overseed this moving.

Q. When you had a conversation with Mr. Creager, about 9.45 on the morning of the 14th of August, did he not tell you he personally knew Major Penrose and would be able to speak for you with the Major if he went up with you?—A. I believe that Mr. Creager did tell me—he said, "I have had the pleasure of meeting the Major and I will go and see him in your behalf." I believe he did tell me that.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. The injuries that you have described are the only injuries apparent on your wife's person? That is, pulling out this hair?—A. Yes, sir; her shoulder and head.

Q. Did you personally examine them and see them?—A. Oh, yes.

Q. Tell the court what they were?—A. Nothing more than he pulled the hair out of her head—a hand full of hair.

Q. You said something about her shoulder?—A. It seems her right shoulder had been hurt.

Q. Did you examine that?—A. Yes, sir; but there were no bruises on that.

Q. There were no bruises on her body at all?—A. No, sir.

Q. The only real injury was the local one on the side of her head?—A. Yes, sir.

Q. On which side was that?—A. On the right side.

Q. There was no injury on the other side?—A. No, sir. The horse jerked her loose—become frightened, and she still had hold the reins of the horse.

Q. She still had hold the reins of the horse?—A. Yes, sir.

Q. Wasn't the horse inside the yard, too?—A. Oh, yes, sir. She led the horse right up with her. She was in the habit of pulling the saddle off her pony and leaving it there, and I would come along and attend to the horse and put the saddle away myself.

Q. She didn't unsaddle her horse that night?—A. No, sir

QUESTIONS BY ASSOCIATE COUNSEL FOR THE ACCUSED.

Q. Did you see any people sitting around on the porches of the houses near your house that same night when you came in?—A. No, sir; I don't believe I did. I really don't know; I never paid any attention; there might have been.

Q. Was the situation such that anyone living on Fifteenth street within a block from her would have heard this disturbance?—A. Yes, sir; there was a good deal of excitement around there.

Q. Anybody living there, sitting on the porch, would have heard it?—A. He never did see anything; all there was my wife screamed.

Q. He would have heard that outcry?—A. There was nothing but the vacant posts back of me; she was in the back—my back door step.

Q. But anyone within a block of that location?—A. Really, I couldn't say. I wasn't there. I don't know how loud she hollered or anything about it.

REDIRECT EXAMINATION.

BY THE JUDGE-ADVOCATE.

Q. Was there any excitement outside your house at the time you arrived at it that night?—A. Yes, sir; there was right smart excitement. The policemen were there and one of them, as I stated, inside of my yard, and I asked him what was the trouble and they heard my voice and hollered for me to come inside the house as quick as I could.

QUESTIONS BY THE COURT.

Q. Why did you move out of your house and where did you move to?—A. My wife—she just refused to live there any longer, and I couldn't blame her, and I didn't want her to. The abuse that we had stood for before and this coming on top of it was a little more than I could stand, and I moved to—I don't know the name of the street now. I can't think of it. It is the first street west of the main street, about 12 or 15 blocks north of the main business part of town.

Q. What date was it when the soldiers were swearing in front of your house and one of them said "Go on, Buck?"—A. The 11th of August.

Q. Speaking of the assault on your wife, you said it was all around town in a little time. How do you know it was all around town?—A. Well, when I got downtown the next morning there were several asked me about it. Anyhow, the first few people I met—I don't know who they were—asked me, and I told them I was in a hurry, I would see them later; they asked me if it was a fact and I told them it was. The police, I guess—I don't know his name, Mr. Combe's prescription clerk—lived on one corner and he knew all about it, and he opens up at half past 5, I believe, in the morning.

Q. What hour did you go downtown next morning?—A. I don't know; between 7 and 8 o'clock.

Q. You have said there was a light inside your house on that night—could it be seen from the place your wife was attacked?—A. Yes, sir; the doors were open, as I stated, and I had the house screened myself, and you could see clear through the house.

Q. Was there anybody in the house at that time?—A. Was there anyone in the house at the time of my wife being attacked?

The judge-advocate:

I will read that again: "Was there anybody in the house at that time?" The time referred to when your wife was attacked, says the court.

A. McClain was in the back room taking a bath; Mrs. Byrom and Mrs. McClain were sitting in the front room talking, with a bright light burning.

(The witness was then excused.)

The judge-advocate:

I would like the indulgence of the court for a brief recess. I have sent for the next witness and he has not arrived, but will be here in a very few minutes.

The court then took a recess until 2.55 p. m., at which hour the members of the court, the judge-advocate, the accused, his counsel, and the reporter resumed their seats.

A. LITTLEFIELD, a witness for the prosecution, was duly sworn and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Now, I will caution you in answering my questions to answer them direct to the court.—A. Yes, sir.

Q. Please give your name, your residence, and your occupation.—A. Almas Littlefield; I live in Brownsville, and am deputy sheriff of Brownsville, Cameron County.

Q. How long have you been living in Brownsville?—A. I have lived there near on to two years.

Q. What position did you hold on August 13, 1906?—A. I was under the chief of police—that is, sometimes I was working with him and sometimes I wasn't. I held no regular position then at all.

Q. But you were under the chief of police on August 13, 1906, as I understand you to say?—A. No, sir; I can't say that I was exactly

under him that day. I had helped him and would help him when he needed my assistance, and when he didn't I wouldn't.

Q. Where were you on the night of August 13, 1906?—A. I was in Brownsville.

Q. In the neighborhood of the hour of midnight, where were you?—A. I had went to my place of residence about 11.30 and laid down and went to sleep.

Q. Where is your place of residence?—A. Rio Grande Hotel.

Q. Did anything unusual occur upon this night of August 13, 1906; if so, please state fully to the court what you heard and saw?—A. Well, I was awakened about 12 o'clock by some shots—one or two, probably—and I got up and put on as little clothes as I could get out in town with, and while I was dressing I heard several more, and while I was going downtown there must have been something like a hundred, or probably more than a hundred, shots, and I run down to the alley between Elizabeth and——

Q. Just one moment. Will you go to the map and point out as you testify where you were at various times that night?—A. (Witness goes to map.) Well, I come down from up here——

Q. Name the streets, please.—A. I was on Jefferson street, right about here (indicating).

Q. Jefferson, between what streets?—A. I was between Twelfth and Eleventh, and I went down Eleventh street and got in this alley; here it is.

Q. What alley?—A. The alley between Elizabeth and Washington, and I come down this alley to somewhere to in here (indicating)——

Q. That is about midway between Twelfth and Thirteenth, or between Eleventh and Twelfth. You are pointing between Twelfth and Thirteenth?—A. Yes, sir. When I was in here somewhere between Eleventh and Twelfth, in the alley, I seen a shot; there was one shot I could see the blaze, and I heard several more in here.

Q. Where is that?—A. Between Twelfth and Thirteenth in the same alley. And I was about midway of this same alley in the next block between Eleventh and Twelfth.

Q. You pointed then to about where you saw this shot. What is that building? Has it got any number on it in that map?—A. Building No. 3.

Q. What is that building?—A. That is the Ruby Saloon. Well, when I seen that shot there I stopped; I was about the middle of this block in the alley between Eleventh and Twelfth, and when I seen this shot here I stopped and I stood there I reckon maybe a minute, and when the shot was fired I could see the bunch of men standing there and I seen them further up.

Q. Did they approach you?—A. They came toward me a little piece. I didn't know they were moving until I seen them here; that was probably about 20 feet back from the mouth of the alley of Twelfth street.

Q. What were they doing then?—A. They ran on there and stopped and stood there maybe not half a minute and then they turned back and when they started back this way I followed them back down this way and they come along here (indicating) and when I was about here, back of this Ruby Saloon, why, they come out the mouth of this alley here. We were both running right against the side of this fence.

Q. On the left-hand side of the alley?—A. Yes, sir; when they went out the mouth of the alley here (indicating).

Q. On what street?—A. Thirteenth street. All of them come right around this way and turned when I got about to this place here (indicating).

Q. A little beyond the Ruby Saloon?—A. Yes, sir; probably a couple of doors, I heard some shooting back over here.

Q. Where is that?—A. On Washington street, somewhere along about there. I stopped there and stood there until they got there (indicating).

Q. How long did that shooting on Washington continue?—A. That didn't last very long.

Q. How long a time elapsed when you lost sight of these men coming out of the alley until you heard these shots on Washington street? A. I had run maybe 20 or 30 steps.

Q. A very brief moment?—A. You might say half a minute or something like that. When the firing stopped over here on Washington street I run to this corner.

Q. Corner of what?—A. Corner of Thirteenth.

Q. For convenience we have decided to call that Cowen alley.—A. When I got to that corner and I seen these people coming right along there.

Q. Where is that?—A. On Washington and Thirteenth. They were running diagonally across Washington and Thirteenth streets.

Q. Before you go any further, are you familiar with the position of that street light on the corner?—A. Yes, sir.

Q. Is it correctly marked on that map?—A. No, sir; that street light is right there in that corner.

Q. It would then be directly across Thirteenth street toward the post on the same street. It is now marked on the right-hand side of Washington?—A. That is on the right-hand side of Washington and on the wrong side of Thirteenth; it ought to be right there (indicating).

Q. Will you continue, please?—A. When I got here, just as I came to the corner I looked around here; I ran around, and they were going right across here; they went right over toward this corner.

Q. Corner of what?—A. Corner of Washington and Thirteenth.

Q. And when they got further?—A. They were out of my sight, and I come on up here and turned around and went right up here to Mr. Tate's house, and got in the house there where he lived; it is either one of the two of these houses—that one there, I believe.

Q. That is next door to the house marked what number?—A. Next door to the house marked "6;" next door to Mr. Starck's. That is about all I seen of them. I got in there and waited some little time—probably ten minutes; I wasn't sure just what time I stopped there; but when I went out I went out here and went up to the corner of Washington and Twelfth streets and there was a squad of soldiers coming there; I met a bunch of soldiers on the corner of Washington and Twelfth.

Q. What did you do then?—A. I turned and went back into Tate's house.

Q. What did you do that for?—A. They hollered at me to stop, and they threw their guns over toward me, and I jumped the fence, right along in here somewhere, and there is a little low stone wall,

probably 18 or 20 inches high, there, and I jumped over the fence, and there is another fence there, and I went around on back into Mr. Tate's house.

Q. What was your object in getting back into Mr. Tate's house?—A. My opinion was that they were coming down there to shoot up his house, and I went back there and then I wanted to get away from them.

Q. Did you go back there to protect Mr. Tate, or him to protect you?—A. That was my intention when I got back there. My intention was to protect myself.

Q. I am going to take you back to Cowen alley and Thirteenth street. You say as you came out of the mouth of the alley you saw some men going across the street at Thirteenth and Washington; did any of them look back at you?—A. Yes, sir; one looked back.

Q. Describe his appearance, as near as you can?—A. He was a tall, slender man, and he was a very black man.

Q. Do you mean by that he was a negro?—A. I would mean he was a negro.

Q. Or a dark-skinned white man?—A. I would mean he was a negro.

Q. Was there anything about the appearance of the other men that attracted your attention?—A. No, sir; nothing more than——

Q. Their dress or anything else?—A. They were in soldiers' uniforms and had their guns.

Q. What kind of uniforms?—A. They wore a khaki uniform. That is, the pants; and some of them had a coat and some in their shirt sleeves.

Q. Are you fairly familiar with the policemen of Brownsville?—A. Yes, sir.

Q. Any of these people that you have described, could they have been some of the Brownsville police?—A. No, sir.

Q. Why not?—A. Well, because I know them—am personally acquainted with every one of them.

Q. Are you personally acquainted with every man on the police force down there?—A. Yes, sir. If I don't know the men's names, I know the men. I have been right there with them every day for close onto a couple of years.

Q. Compare the size of the men you saw with the size of the Brownsville police.—A. There is a whole lot of difference in them.

Q. In what way?—A. The Brownsville police as a general rule—there ain't but one or two that ain't very big chunky, fat fellows.

Q. How about their height?—A. The police—I can't tell you exactly their height. They are about my height and some of them larger—some of them great big ones.

Q. Most of them corpulent—most of them are rather rotund, or rather fat?—A. Yes, sir; most of them fat.

Q. And these people you saw coming up that street or alley, they were not fat?—A. No, sir; they wasn't none of them as fat as them policemen.

Q. At what gait were these people that you have described as soldiers going? Were they walking or running?—A. They were running.

Q. In what manner were they holding those weapons in their hands?—A. They were holding them down in their hands that way, with the muzzle of the guns pointing down. They were stooping

down that way (indicates by stooping), running with the gun grasped about midway, with the muzzle pointing toward the ground.

Q. Do you suppose these men could have been Mexicans masquerading as soldiers?—A. They didn't look like it to me.

(The witness takes his seat.)

Q. Now, about what time did all this happen, to the best of your recollection?—A. About 12 o'clock. I never looked to see what time it was when it happened.

Q. About how many shots do you think was fired into the Ruby Saloon?—A. I couldn't tell you exactly; there might have been 3, or there might have been 5 or 6 or 7.

Q. There was more than one?—A. I seen the flash of one gun very distinctly.

Q. Did you glance into the Ruby Saloon when you were progressing up the alley with your shoulder to the wall?—A. No, sir; I was looking kind of in front of me.

Q. Did you ever testify before the grand jury about this affair?—A. No, sir.

Q. Before the Citizens' Committee?—A. No, sir.

Q. Or before the so-called Purdy investigating committee?—A. No, sir; I can't say that I did. I never seen Mr. Purdy. I talked with Mr. Creager some about this business after Mr. Purdy had left.

Q. That was after he had left?—A. Yes, sir; that was after Mr. Purdy was gone.

Q. Are you fairly familiar with firearms?—A. I suppose so.

Q. Are you fairly familiar with the sounds of various firearms? I mean by that whether shotguns, revolvers, or cannons?—A. Yes, sir.

Q. What did these first shots sound like they had come from?—A. They sounded like they had come from a high-powered gun.

(The reporter read the last question and answer at request of counsel for the accused.)

Q. To the best of your recollection, how long a time did all this firing continue until you saw these men passing the light at the corner of Washington and Thirteenth streets?—A. Well, I couldn't tell you just exactly; it might have been maybe eight or nine minutes; somewhere along about that. I wasn't paying a great deal of attention to the time.

Q. Did you hear any bugle calls that night?—A. Yes, sir.

Q. Had the bugle calls sounded before you saw these men passing the corner of Thirteenth and Washington, or did it sound after they had passed?—A. There was one sounded just afterwards, while I was running across the street myself—across Washington street—there was one sounded then.

Q. The men at that time had passed on up Washington street toward the post?—A. They had gone up that way; yes, sir.

CROSS-EXAMINATION.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. How old are you, Mr. Littlefield?—A. Twenty-six.

Q. What have you been doing for a living all your life?—A. Well, I have been farming; I have worked on a ranch during my life and I have worked on the railroad some.

Q. You said you lived in Brownsville two years?—A. No, sir; I lived there close to two years—not two years.

Q. What did you do during that two years?—A. I worked on the railroad awhile while I lived in Brownsville, and I have been an officer down there awhile.

Q. Tell us exactly when you were an officer down there? We want to know.—A. I can't tell you just exactly, but it——

The court:

If you please, speak a little louder.

A. I say I can't tell just exactly. The next evening, after the evening of the 14th, Mayor Combe asked me if I would go on as a special officer—go on the police force as a special officer.

Q. Was that the first time you had been an officer of the police force of Brownsville?—A. As a regular officer. As to working every day, you might say that it was. I had done some work with the chief of police before that when it was necessary—when he needed men.

Q. Tell the court exactly what service you had had with the police force of Brownsville, both before and after this shooting.—A. Well, before the shooting, in going to Mexican dances around there, sometimes I would go out with the police there and I would be there and if the police called on me I helped them.

Q. Were you employed regularly or irregularly on the police force under pay any time before August 14? If so, tell the court exactly when and what compensation.—A. I got none at all.

Q. Then was your service on the police force voluntary service?—A. Certainly it was voluntary service.

Q. How much of it, and when?—A. Well, I am not prepared to say just exactly when it was and how many times.

Q. Give us your best recollection of what service you gave, and when, previous to August 14.—A. Previous to August 14—well, I remember one time up at a Mexican baile the police were having a right smart trouble up there with drunk men.

Q. When was this?—A. I don't know what night it was. I kept no memorandum of the time.

Q. With respect to August 13, give us your best recollection as near as you can fix the day.—A. It might have been along about the middle of July.

Q. Was it?—A. I can not say positively it was.

Q. Might it have been in June?—A. No, sir.

Q. Was it in July?—A. I can't say positively that it was in July. It might have been along about the first part of August.

Q. Is that the only time you had served on the police force previous to that that you can recall?—A. No, sir; I recall once taking a man to the county court-house—carried him and put him in jail.

Q. What day was that?—A. I don't know what date it was. Some time during the summer.

Q. Give us your best recollection?—A. It might have been sometime along in July.

Q. Was it?—A. I can't say that it was.

Q. Will you say it was not?—A. No, sir.

Q. Was there any other time you were employed on the police force?—A. I can't remember any other time.

Q. So that twice you were employed on the police force of Brownsville for special work?—A. Twice, that I remember of.

Q. Tell the court just what you did on each occasion and how long it took you.—A. One time it took me about a couple of hours.

Q. What did you do?—A. Taken a man from the dance down to the jail and put him in jail, and went back up there and helped the police put out a bunch of drunks.

Q. Where was this?—A. That was a dance hall called the Deliche.

Q. Did you have any regular work at that time?—A. No, sir; not right at that time.

Q. Then, take up the other occasion. What did you do on this other occasion that might have been in July last year?—A. A policeman went into the county court-house there with a prisoner and he turned him over to me and later I taken him around and put him in jail.

Q. How long did this duty last?—A. It might have lasted five minutes or eight minutes—maybe ten minutes.

Q. Then if I understand it, you might have been employed twice, once lasting for a matter of two hours and another time five to ten minutes?—A. Yes, sir.

Q. Get any pay for this?—A. No, sir.

Q. What did you do now during the last year from April to September? Did you have any regular work?—A. From April to September?

Q. Yes.—A. Let me see—had no regular work; no, sir.

Q. Then you simply took up these jobs with the police as an accommodation to them?—A. Yes, sir; as an accommodation to the chief.

Q. Were you sworn in at all previous to August 14?—A. No, sir.

Q. Were you sworn in August 14 as a special policeman?—A. The night of August 14? Yes, sir.

Q. How long did you serve in that capacity?—A. I served in that capacity until the niggers left town

Q. And then you were dropped?—A. Yes, sir.

Q. Did you get a compensation for that?—A. Yes, sir.

Q. Where were you stationed as a special policeman?—A. I was stationed—I don't know. I was in the mouth of an alley—let me see; it was Thirteenth. It might be the alley between Jefferson street.

Q. Where were you living on the night of the 13th?—A. In Brownsville.

Q. Whereabouts?—A. Rio Grande Hotel.

Q. Paying your board there?—A. No, sir; I wasn't paying any board there.

Q. Working for the place at all?—A. No, sir.

Q. Didn't have to pay board?—A. I didn't have to pay board.

Q. Did you have a watch that night?—A. No, sir.

Q. You didn't own any watch?—A. No, sir.

Q. You said you went home about midnight—about 11.30?—A. Yes, sir.

Q. Where did you leave from to go home?—A. I can't just exactly tell you. I had been down in town.

Q. What had you been doing that evening up to the time you left?—A. I had been around the house most of the evening, I suppose, and had been down to——

Q. You say you suppose—were you?—A. I said I suppose.

Q. Were you?—A. I can't say that I was.

Q. Where were you?—A. I was in Brownsville; I was around on the street and at home.

Q. And you can't tell anything about your movements up to 11.30?—A. I can tell I was probably somewhere between the post-office and the Miller Hotel along on Elizabeth street.

Q. All the time up to 11.30?—A. I couldn't say I was. I went home probably for supper.

Q. Were you in any saloons up to 11.30?—A. I don't remember; I can't say that I was.

Q. Will you say you were not?—A. No, sir.

Q. Had you been drinking any that night?—A. No, sir.

Q. You are sure about that?—A. Positive.

Q. Hadn't drunk anything at all?—A. Might have taken a drink or two; might have taken a glass of beer; can't say that I did.

Q. You won't say that you did not?—A. Won't say that I didn't; I don't remember.

Q. Can you recall any persons that you were with at all that night up to 11.30?—A. Yes, sir.

Q. Who were they and where?—A. I was with my stepfather and my mother and a couple of my stepsisters for a while, and later on I went downtown.

Q. Tell us just where you were with them? I want to get your movements that night. You have traced them very accurately after 11.30; we want to get them up to 11.30.

(The reporter was requested to read the question.)

Q. (Continued.) Where were you? You said you were with your stepfather?—A. We were at home.

Q. Where was your house?—A. Rio Grande Hotel.

Q. Were they living at that hotel?—A. Yes, sir.

Q. How long did you stay there?—A. I don't know exactly what hour I left there. I was there after dark but it seems to me I went downtown with a fellow named Campbell; I won't be positive.

Q. Do you know his full name?—A. Sam Campbell.

Q. Tell us where you went with him.—A. I think we must have went to the post-office; I am not positive.

Q. Did you?—A. I am not positive.

Q. Tell us the rest of it.—A. That is about all, I reckon. I was with Campbell some time—might say between 8 o'clock and 10 o'clock. He went back to the hotel and I stayed downtown.

Q. Where were you when he went back?—A. Where was I?

Q. Yes; you said he went back.—A. Maybe we was on the corner of Elizabeth and Twelfth streets.

Q. Were you on the corner?—A. I can't say positive that I was. I paid no attention to anything about that.

Q. Anything else you did?—A. Nothing that I can remember of.

Q. Talk to anybody else?—A. I suppose I talked to quite a number.

Q. We want to know who they were?—A. I can't tell you exactly who. I meet probably a hundred men on the street every night. There was several custom-house officers, and I probably met several of them.

Q. You don't remember any single saloon you went into before 11.30 that night?—A. No, sir; I don't. I might have went into Mr. Weller's saloon.

Q. Did you go in there?—A. I can't say that I did.

Q. You won't say that you didn't?—A. No, sir.

Q. Will you say you went into any other saloon that night?—A. No, sir.

Q. And won't say you did not?—A. Won't say that I didn't; don't remember.

Q. You say you were awakened about 12 by some shots?—A. Somewhere just about 12 o'clock.

Q. How many shots did you hear first?—A. First, I heard one shot—one or two.

Q. What did they sound like?—A. They sounded like a high-powered gun.

Q. That is the first you heard?—A. Yes, sir.

Q. Where were they? Could you locate them?—A. When I first heard them I thought they were down about the mouth of Elizabeth street, where Elizabeth comes into the garrison; somewheres down there about the Leahy Hotel. That was my opinion when I was at home. They were in that direction; that is all I could tell.

Q. How long after that before you heard the next shots you spoke of?—A. It wasn't very long; I don't know; it might have been five seconds—something like that.

Q. Then how many did you hear?—A. Must have been three or four that time.

Q. What did they sound like?—A. Just like the others.

Q. High-powered gun?—A. Yes, sir; high-powered gun.

Q. Then how long before you heard the next one?—A. Might have been a couple of seconds.

Q. And how many did you hear then?—A. There was a good deal of them.

Q. And what did they sound like?—A. Just like the balance.

Q. You were dressing all this time?—A. About that time I had done got what clothes I went downtown with on.

Q. What did you put on?—A. I put on a pair of shoes and my pants and a coat.

Q. And a hat?—A. Put on my hat; I taken that along with me.

Q. How long did it take you to do this?—A. Taken me probably—it might have taken me about twelve seconds—maybe fifteen.

Q. You dressed in twelve or fifteen seconds?—A. I didn't say that I did; it might have been half a minute.

Q. Is that your best judgment now—that it took you half a minute to dress?—A. Well, we will let it go at half a minute.

Q. Where were you in the hotel?—A. In the front room.

Q. What floor?—A. On the second floor in the room facing right over the street.

Q. Which street?—A. Jefferson.

Q. And the entrance to the hotel is on what street?—A. Jefferson.

Q. How long did it take you to get down on the street?—A. The head of the stairs is right in about 6 or 8 feet of my room and the stairs comes right out on the street, and it might have taken me probably ten seconds or may half a minute to get down there.

Q. Did it take you half a minute?—A. I can't say that it did.

Q. What is your best judgment?—A. Somewhere about that time.

Q. Then, from the time you first heard these shots until you got down on the street it was a minute?—A. Minute, or probably a little over a minute.

Q. How much over a minute?—A. I don't know.

Q. What is your best judgment?—A. It might have been a minute or maybe a minute and a half.

Q. Is a minute and a half your best judgment?—A. Well, let it go at a minute and a half.

Q. How much more firing had you heard than what you have told us, in that minute and a half?—A. When I was going downstairs I heard some more.

Q. How many did you hear then?—A. I don't know how many there were then.

Q. Give us your best judgment.—A. Maybe 10 or 15 or 12; I can't make any accurate guess at that at all.

Q. Was it continuous, or how did it come?—A. They would fire a volley and then stop, and then in a second or two—and then some more.

Q. How many of these volleys did you hear up to the time you got down on the street?—A. I couldn't tell you how many of them. I never counted them. After I got started I wasn't listening much.

Q. Give us your best recollection.—A. Maybe there was from the first—there might have been three or four different bunches of shots until I got on the street and got to running.

Q. You didn't commence to run until you got down on the street?—A. I was running from the time I left my room, but I didn't get started plum good until I got on the street.

Q. And you were running toward the shots?—A. No, sir; I run upon Eleventh street, until I got to the alley between Elizabeth and Washington.

Q. Now, how far did you say it was—how many blocks—from the hotel down to Washington street?—A. Down to Washington street—the hotel is on the next street beyond Adams.

Q. What street?—A. Between Eleventh and Twelfth.

Q. How many shots then did you hear up to the time you started to run real good?—A. I didn't count them; there was a whole lot of them.

Q. And you located those shots where?—A. I located them down there in the lower end of town.

Q. What do you mean by the lower end of town?—A. Down toward the garrison.

Q. Had they changed in location at all?—A. They seemed to be coming further up the street toward the post-office.

Q. Was that during this minute and a half up to the time you got downstairs and commenced to run when you determined they were coming uptown?—A. It seemed that way to me.

Q. Did it seem that way to you at the time? That is what we want.—A. Yes, sir; it did.

Q. Now, then you commenced to run good?—A. Yes, sir.

Q. And you ran right down toward that street and you thought they were coming up that way?—A. I thought they were coming up Elizabeth street; that was my opinion at the time.

Q. You were making for Elizabeth street?—A. Yes, sir.

Q. You wanted to get into the mix up?—A. I wanted to go and see what was the matter.

Q. You were running to overhaul this shooting?—A. My idea in going that way was to get in front of it.

Q. That would put you right in the mix up of it, wouldn't it?—A. I expect it would.

Q. How many shots did you hear, or volleys, from the time you took up this good run you spoke of until you got down to the alley?—A. I haven't the least idea. It might have been three or four. I wasn't counting them.

Q. Only three or four?—A. I couldn't say how many there were.

Q. How long did it take you to run down there?—A. It didn't take me very long.

Q. Give us the time.—A. Maybe four minutes to get down to the alley.

Q. And after you have got to the alley—we have now decided to call it Cowen's alley—that is on Eleventh street, was it?—A. I was on Eleventh street; I was running down Eleventh street.

Q. When you got down to Eleventh street and Cowen's alley you had consumed then five and a half minutes. Where was this firing then?—A. When I got there it was still down toward the garrison.

Q. Did you turn down this alley, then?—A. I ran down the alley then toward it.

Q. How far did you go down it?—A. I run down there first to about the center of the block between Thirteenth and Twelfth streets before I seen or got sight of anyone doing the shooting.

Q. How long did it take you to get down there?—A. I haven't much idea about that.

Q. Give us your best recollection.—A. It might have taken a minute and a half or two minutes.

Q. Now, we have traced your movements for seven minutes. Now, at the end of seven minutes you were, as I understand you, in Cowen's alley midway between Twelfth and Thirteenth streets?—A. Yes, sir.

Q. And the parties that were shooting were where?—A. They were about midway between Twelfth and Thirteenth streets in the alley—not quite midway—right ahead of me.

Q. How far from you?—A. They were about 100 yards, maybe.

Q. They were then in the middle of the block between Thirteenth and Fourteenth?—A. No, sir.

Q. I understood you to say you were in the alley between Twelfth and Thirteenth?—A. No, sir.

Q. Where were you?—A. I was in the alley between Twelfth and Eleventh.

Q. They were in the alley between Twelfth and Thirteenth?—A. Yes, sir.

Q. Did you see them there?—A. Yes, sir.

Q. How many were there?—A. I couldn't tell you. I didn't count them. I wouldn't have knew they were, only I saw the shots.

Q. How many shots did you see fired there?—A. I saw one shot.

Q. Was that all you heard fired there?—A. No, sir.

Q. How many did you hear fired there?—A. Maybe four or five; more fired down that way.

Q. And how long did you say the men stood there?—A. They didn't stand there; they might have stood there fifteen seconds after that shot was fired.

Q. Did you see anybody else but that bunch of men?—A. In my run?

Q. Yes.—A. Passed a Mexican on the street.

Q. Where did you pass him?—A. Up on Eleventh street.

Q. Whereabouts?—A. I think he was on Eleventh street between Washington and Adams.

Q. Was he there?—A. Can't say positively that he was.

Q. What is your best recollection?—A. That is my opinion that he was right in there.

Q. What was he doing?—A. He was running.

Q. How was he dressed?—A. I think he had on a pair of black pants, and I don't believe he had on any coat at all.

Q. Was he running away from the firing?—A. He was going in the other direction.

Q. Running away from the firing, was he?—A. Yes, sir.

Q. How long did you stand still there at that place in the alley between Twelfth and Thirteenth—midway between Twelfth and Thirteenth?—A. I stopped there until they quit firing and I might have stood there half a minute.

Q. That makes seven and a half minutes. Now, you say these men turned to go back?—A. They come further up.

Q. How much further up did they come?—A. It might be about 75 feet—something like that.

Q. How close to the alley?—A. About 20 feet.

Q. I meant to say how close to Twelfth street?—A. About 20 feet.

Q. And that made them how close to you?—A. That made them, maybe—well, about 280 feet from me.

Q. And did you have any opportunity to segregate them, determine how many were there?—A. No, sir; I didn't, it was dark in there and I could just see the bunch.

Q. You don't know how many there were?—A. No, sir.

Q. Could you tell how they were dressed?—A. Couldn't see how they were dressed in there.

Q. Did you hear any bullets whistling over you?—A. I heard quite a number whistling over me during the night.

Q. I mean during this time you were in the alley?—A. No, sir.

Q. There were no bullets whistling over you there?—A. No, sir.

Q. So that from the time you turned into that alley between Washington and Elizabeth, or Cowen's alley, you heard no bullets whistling over you?—A. If any passed over me I taken no notice of them.

Q. What position were you in all this time?—A. Well, I never kept much record of my position while I was running.

Q. But while you were in the alley there?—A. I got up as flat against the wall as I could.

Q. Why did you do that?—A. I thought they might take a notion to fire a shot or two up my way.

Q. You don't think they were firing a shot or two up your way while you were in that alley?—A. No, sir.

Q. Could you determine the direction in which any of these shots were fired?—A. Yes, sir.

Q. What direction were they fired in?—A. They were fired right this direction, from left to right.

Q. Tell us what direction. Describe it by some object. A. I told you from right to left—from left to right. They were facing me and the shots were just like this. (Indicates from left to right.)

Q. That would be then toward Washington street, would it?—A. No, sir; that would make the shot going toward Elizabeth street.

Q. Where were they when you saw those shots going that direction?—A. About middle way between Twelfth and Thirteenth streets.

Q. And you say they were facing toward you and you were in the alley facing toward the post?—A. Yes, sir.

Q. Between Twelfth and Thirteenth streets?—A. No, sir.

Q. Eleventh and Twelfth streets?—A. Yes, sir.

Q. And the shots went from left to right?—A. Yes, sir.

Q. From your left to right, or how?—A. They were standing like they were facing me; the shots went this way (indicating).

Q. That is from right to left, isn't it?—A. Well, from right to left.

Q. Were they pointed up or down?—A. Looked like they were about straight out at a height of about four and a half feet.

Q. Were they horizontal or elevated?—A. They looked like they were about straight.

Q. Was there any light there?—A. There might have been a dim light coming out of the back door of this saloon—that is, the back gate.

Q. Did it make any impression on your mind as a light?—A. No, sir; I never noticed any light there until I seen the flash of the gun.

Q. Did this flash of the gun light up so you could see any objects?—A. It showed me a bunch of men; yes, sir.

Q. It was bright enough to show up a bunch of men?—A. Yes, sir.

Q. It wasn't enough so you could segregate them or anything of that kind?—A. No, sir.

Q. You couldn't see the complexion or the color of clothes they had on?—A. I couldn't tell anything about the complexion. I could tell that the clothing wasn't black.

Q. Did you only see the flash of one gun?—A. That is all.

Q. How many shots did you hear right at that time?—A. Well, I wasn't counting them shots.

Q. Give us your best recollection, now.—A. I couldn't tell you; there might have been 4 or 5 or 3; there might have been as many as 6.

Q. You don't think there was any more than that?—A. There might have been.

Q. Were there?—A. I couldn't say.

Q. What is your best recollection?—A. I have given you my best recollection.

Q. What is it?—A. There might have been anywhere from 3 to 6 shots.

Q. And the noise of the shots you heard were where?—A. The noise of the shots that I heard were around on Washington street.

Q. And you saw these men go back toward Thirteenth street?—A. Yes, sir.

Q. How did they go—what gait?—A. They must have been running through the alley.

Q. Were they running?—A. I couldn't say they were; I didn't have light enough to tell. I was running part of the time, and part of the time I was trotting.

Q. Well, you trotted directly toward them as soon as you saw them turn and go the other way?—A. Yes, sir; I followed them.

Q. Yes.—A. Passed a Mexican on the street.

Q. Where did you pass him?—A. Up on Eleventh street.

Q. Whereabouts?—A. I think he was on Eleventh street between Washington and Adams.

Q. Was he there?—A. Can't say positively that he was.

Q. What is your best recollection?—A. That is my opinion that he was right in there.

Q. What was he doing?—A. He was running.

Q. How was he dressed?—A. I think he had on a pair of black pants, and I don't believe he had on any coat at all.

Q. Was he running away from the firing?—A. He was going in the other direction.

Q. Running away from the firing, was he?—A. Yes, sir.

Q. How long did you stand still there at that place in the alley between Twelfth and Thirteenth—midway between Twelfth and Thirteenth?—A. I stopped there until they quit firing and I might have stood there half a minute.

Q. That makes seven and a half minutes. Now, you say these men turned to go back?—A. They come further up.

Q. How much further up did they come?—A. It might be about 75 feet—something like that.

Q. How close to the alley?—A. About 20 feet.

Q. I meant to say how close to Twelfth street?—A. About 20 feet.

Q. And that made them how close to you?—A. That made them, maybe—well, about 280 feet from me.

Q. And did you have any opportunity to segregate them, determine how many were there?—A. No, sir; I didn't, it was dark in there and I could just see the bunch.

Q. You don't know how many there were?—A. No, sir.

Q. Could you tell how they were dressed?—A. Couldn't see how they were dressed in there.

Q. Did you hear any bullets whistling over you?—A. I heard quite a number whistling over me during the night.

Q. I mean during this time you were in the alley?—A. No, sir.

Q. There were no bullets whistling over you there?—A. No, sir.

Q. So that from the time you turned into that alley between Washington and Elizabeth, or Cowen's alley, you heard no bullets whistling over you?—A. If any passed over me I taken no notice of them.

Q. What position were you in all this time?—A. Well, I never kept much record of my position while I was running.

Q. But while you were in the alley there?—A. I got up as flat against the wall as I could.

Q. Why did you do that?—A. I thought they might take a notion to fire a shot or two up my way.

Q. You don't think they were firing a shot or two up your way while you were in that alley?—A. No, sir.

Q. Could you determine the direction in which any of these shots were fired?—A. Yes, sir.

Q. What direction were they fired in?—A. They were fired right this direction, from left to right.

Q. Tell us what direction. Describe it by some object. A. I told you from right to left—from left to right. They were facing me and the shots were just like this. (Indicates from left to right.)

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Q. Where were they when you saw those shots going that direction?—A. About middle way between Twelfth and Thirteenth streets.

Q. And you say they were facing toward you and you were in the alley facing toward the post?—A. Yes, sir.

Q. Between Twelfth and Thirteenth streets?—A. No, sir.

Q. Eleventh and Twelfth streets?—A. Yes, sir.

Q. And the shots went from left to right?—A. Yes, sir.

Q. From your left to right, or how?—A. They were standing like they were facing me; the shots went this way (indicating).

Q. That is from right to left, isn't it?—A. Well, from right to left.

Q. Were they pointed up or down?—A. Looked like they were about straight out at a height of about four and a half feet.

Q. Were they horizontal or elevated?—A. They looked like they were about straight.

Q. Was there any light there?—A. There might have been a dim light coming out of the back door of this saloon—that is, the back gate.

Q. Did it make any impression on your mind as a light?—A. No, sir; I never noticed any light there until I seen the flash of the gun.

Q. Did this flash of the gun light up so you could see any objects?—A. It showed me a bunch of men; yes, sir.

Q. It was bright enough to show up a bunch of men?—A. Yes, sir.

Q. It wasn't enough so you could segregate them or anything of that kind?—A. No, sir.

Q. You couldn't see the complexion or the color of clothes they had on?—A. I couldn't tell anything about the complexion. I could tell that the clothing wasn't black.

Q. Did you only see the flash of one gun?—A. That is all.

Q. How many shots did you hear right at that time?—A. Well, I wasn't counting them shots.

Q. Give us your best recollection, now.—A. I couldn't tell you; there might have been 4 or 5 or 3; there might have been as many as 6.

Q. You don't think there was any more than that?—A. There might have been.

Q. Were there?—A. I couldn't say.

Q. What is your best recollection?—A. I have given you my best recollection.

Q. What is it?—A. There might have been anywhere from 3 to 6 shots.

Q. And the noise of the shots you heard were where?—A. The noise of the shots that I heard were around on Washington street.

Q. And you saw these men go back toward Thirteenth street?—A. Yes, sir.

Q. How did they go—what gait?—A. They must have been running through the alley.

Q. Were they running?—A. I couldn't say they were; I didn't have light enough to tell. I was running part of the time, and part of the time I was trotting.

Q. Well, you trotted directly toward them as soon as you saw them turn and go the other way?—A. Yes, sir; I followed them.

Q. Did you see them turn up Thirteenth street from the alley?—A. I couldn't see them turn up Thirteenth street; I lost sight of them when they turned around the corner; we were both running against the left side of the alley.

Q. Were they all up against the left side of the alley?—A. Yes, sir.

Q. And you could see them running or moving fast?—A. Yes, sir.

Q. How is it then you couldn't see them turn from the alley?—A. I said when they got to the mouth of the alley they turned around the corner enough to get out of my sight, and I lost sight of them.

Q. And you run on down to Thirteenth street?—A. No, sir; I went about 30 steps, maybe; or maybe not so far or maybe a little further, when I heard some firing around on Washington street, and I stopped again.

Q. Where were you when you heard that firing?—A. I had just passed the Ruby Saloon.

Q. So you were still at the Ruby Saloon when you heard this firing on Washington street?—A. I was a little past the Ruby Saloon, close up to Thirteenth street.

Q. How far were you from Thirteenth street?—A. I never measured the distance.

Q. How long had this been since you stopped midway between Eleventh and Twelfth streets?—A. It might have been two minutes or may be two minutes and a half.

Q. We have counted up now seven and a half minutes and two and one half minutes, which is ten minutes. So by the time you got around by the Ruby Saloon it was ten minutes. Had you heard any bugle call up to that time?—A. I don't think I had gotten to the Ruby Saloon when I heard a bugle.

Q. Did you hear more than one?—A. I heard two bugle calls that night.

Q. Did you hear more than one at this time? You said you heard one before you got to the Ruby Saloon.—A. No, sir; I can't say that I had. Somewhere up in there I heard a bugle call.

Q. Was it before you got to the Ruby Saloon?—A. Yes, sir; before I got to the Ruby Saloon.

Q. Where were you when you first heard it? Were you at the mouth of the alley on Eleventh street?—A. I might have been just going out of the alley and I might have been down in the alley. I was somewhere about the mouth of that alley going out into the street.

Q. When you first heard the bugle call?—A. Yes, sir.

Q. Didn't you hear a number of others right after that?—A. No, sir. I heard one more, but it was some little time afterwards.

Q. Was it a call that you had heard before?—A. No, sir.

Q. Different from anything you had ever heard before?—A. It seemed so. I didn't pay much attention; I didn't stop and listen at it.

Q. Were you familiar with it?—A. No, sir.

Q. What is your recollection—that you only heard it once there or was there a number of them?—A. I think I heard that bugle call one time up there; I don't know how long it taken to get through with it.

Q. It made a good deal of noise—this call?—A. It made right smart fuss.

Q. How long did this fuss last?—A. I don't know; it might have lasted maybe half a minute.

Q. That is your best recollection now?—A. I didn't say positively it was half a minute; it might have been half a minute or less.

Q. But that is as near as you want to fix it now?—A. Yes, sir.

Q. You went on down to the middle of the alley then. Did you hear any other bugle call after that?—A. After this first one?

Q. Yes.—A. Yes, sir; I heard one after that.

Q. Where were you, and how long was it?—A. I was running across Washington when I heard the other one.

Q. Across Washington street?—A. Yes, sir.

Q. How long after this?—A. It might have been five minutes.

Q. Is that your best recollection now?—A. Well, we will fix it at five or six minutes—something like that; maybe seven minutes.

Q. You were in front of the Ruby Saloon, and you stood there half a minute?—A. I wasn't in front of the Ruby Saloon.

Q. I mean in the rear of the Ruby Saloon.—A. I was past the rear of the Ruby Saloon.

Q. And you stood there half a minute?—A. May be so—half a minute.

Q. And this firing consumed that length of time?—A. No, sir.

Q. How long did that consume?—A. It didn't take but a very little time.

Q. About how long?—A. May be so—a quarter of a minute.

Q. And did you hear any more firing after that?—A. There was a few shots fired afterwards—maybe three or four.

Q. Where were they?—A. They were off toward the post.

Q. Now, were these also sharp reports like the others?—A. Yes, sir.

Q. Did you hear at any time during that night anything but these sharp reports from high-powered guns?—A. I thought during the run—while I was running down that alley—I thought that I heard a six-shooter once.

Q Only once, eh?—A. Yes, sir.

Q. Have you got a six-shooter on now?—A. No, sir.

Q. You consumed ten minutes up to the time you got in the rear of the Ruby Saloon and you stood there about half a minute. Now, how long did it take you to get down to the corner of Thirteenth and Washington?—A. It taken me another half minute, or maybe a minute.

Q. So, in eleven and a half minutes you were at the corner of Cowen alley and Thirteenth street?—A. Yes, sir.

Q. Did you stay back of the corner at all?—A. I ran up to the corner and stuck my head up first and sized up the situation and then I went on out.

Q. How long did you stay there with your head around the corner?—A. I expect I stood there half a minute.

Q. Now, how long after you first got there before you saw these men?—A. The first thing I seen when I stuck my head out.

Q. Did you place your first glance on this tall man that was very black?—A. No, sir; he didn't look back then. They were running then, and I stood there and looked at them, and when they got probably—they had run over 20 feet when he looked back.

Q. Did you see them turn up Thirteenth street from the alley?—A. I couldn't see them turn up Thirteenth street; I lost sight of them when they turned around the corner; we were both running against the left side of the alley.

Q. Were they all up against the left side of the alley?—A. Yes, sir.

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Q. So you were still at the Ruby Saloon when you heard this firing on Washington street?—A. I was a little past the Ruby Saloon, close up to Thirteenth street.

Q. How far were you from Thirteenth street?—A. I never measured the distance.

Q. How long had this been since you stopped midway between Eleventh and Twelfth streets?—A. It might have been two minutes or may be two minutes and a half.

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Q. That is your best recollection now?—A. I didn't say positively it was half a minute; it might have been half a minute or less.

Q. But that is as near as you want to fix it now?—A. Yes, sir.

Q. You went on down to the middle of the alley then. Did you hear any other bugle call after that?—A. After this first one?

Q. Yes.—A. Yes, sir; I heard one after that.

Q. Where were you, and how long was it?—A. I was running across Washington when I heard the other one.

Q. Across Washington street?—A. Yes, sir.

Q. How long after this?—A. It might have been five minutes.

Q. Is that your best recollection now?—A. Well, we will fix it at five or six minutes—something like that; maybe seven minutes.

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Q. And did you hear any more firing after that?—A. There was a few shots fired afterwards—maybe three or four.

Q. Where were they?—A. They were off toward the post.

Q. Now, were these also sharp reports like the others?—A. Yes, sir.

Q. Did you hear at any time during that night anything but these sharp reports from high-powered guns?—A. I thought during the run—while I was running down that alley—I thought that I heard a six-shooter once.

Q Only once, eh?—A. Yes, sir.

Q. Have you got a six-shooter on now?—A. No, sir.

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Q. So, in eleven and a half minutes you were at the corner of Cowen alley and Thirteenth street?—A. Yes, sir.

Q. Did you stay back of the corner at all?—A. I ran up to the corner and stuck my head up first and sized up the situation and then I went on out.

Q. How long did you stay there with your head around the corner?—A. I expect I stood there half a minute.

Q. Now, how long after you first got there before you saw these men?—A. The first thing I seen when I stuck my head out.

Q. Did you place your first glance on this tall man that was very black?—A. No, sir; he didn't look back then. They were running then, and I stood there and looked at them, and when they got probably—they had run over 20 feet when he looked back.

Q. Turned right around so as to give you a good fair open view of him?—A. No, sir; he just turned his head and looked back over his shoulder; he was running, too.

Q. He was running, then?—A. He was running about as fast as a man could stooped over.

Q. Show the court just how he was running?—A. He had his gun down this way, and he was running along about this position. (Illustrates stooping position.)

Q. And, as I understand you, he was running away from where the lights are indicated, there over to the northwest corner. As I understand you, he was running from the west? Running from the west toward the east corner?—A. When I seen him I was right here; when I seen them they was probably right there and they run along until he got about here and he looked back. (Witness indicates on map.)

Q. Bent over that way?—A. Yes, sir.

Q. He was the only one you saw the complexion of?—A. He was the only one I could tell anything about how their faces looked.

Q. Was that the only time you saw these men so that you could swear that he was a black man—any of these men that had been shooting?—A. Yes, sir; I believe it was.

Q. That fleeting glimpse when he cast his eagle eye back to see you was the only time you really saw his complexion?—A. Yes, sir; I expect it was.

Q. And that was a matter of eleven minutes and a half from the time you were aroused by this high-powered shooting?—A. No, sir; from the time I got my clothes put on.

Q. You could see their guns plainly?—A. Yes, sir.

Q. Could you tell whether they had gloves on or not?—A. Couldn't tell; no, sir.

Q. Did any of them have leggings on?—A. It seemed to me that they did. I am not positive about the leggings, though.

Q. Could you tell whether he had on tan shoes or black shoes?—A. Never noticed.

Q. Could you have told if you had noticed?—A. I expect if I looked at his feet I could have told the difference between a tan shoe and a black shoe.

Q. How far were those men from you at that time when you were peeking around the corner?—A. When I first seen them they were just about 150 feet. Them blocks there are 120 feet broad, and Washington street is about 60 feet broad, and they were about halfway. That is about 150 feet.

Q. How many men did you see running across there?—A. There was all the way from 5 to 8. I didn't count that bunch either.

Q. Have you another bunch in mind that you haven't told us about?—A. No, sir.

Q. Why do you speak of them as that bunch?—A. There was another bunch I seen afterwards.

Q. How long afterwards?—A. I couldn't tell you a thing in the world about that time. It might have been twelve minutes when I struck the other bunch.

Q. Did you see the complexion of that other bunch?—A. I sure did.

Q. Any white men among them?—A. Yes, sir; there was one white man.

Q. That was about twelve minutes after you had seen these men?—A. About that; it might have been anywhere between ten and fifteen minutes.

Q. Not more than fifteen?—A. Couldn't have been hardly fifteen minutes; might possibly have been fifteen minutes, but I hardly think it was.

Q. And what did they say to you?—A. They hollered at me to halt.

Q. Where were you exactly when they hollered at you to halt?—A. They were coming down the street, and we both run into each other right at the corner—well, we didn't run right into each other; I might have been 30 feet from them.

Q. Were you on the sidewalk or in the street?—A. I was on the sidewalk.

Q. And they were in the street or on the sidewalk?—A. They were in the middle of the street.

Q. What kind of formation were they in?—A. They were walking down in a squad; they might have been about four broad.

Q. Were they four broad?—A. I couldn't say they were.

Q. Can you say they were not?—A. I can't say.

Q. Your glance at them was pretty fleeting?—A. Didn't last long.

Q. Why was it you were so anxious to avoid them and you chased the others so vigorously?—A. Them fellows pointed their guns at me.

Q. This last bunch that might have been in fours, is that the bunch that pointed their guns at you?—A. Yes, sir.

Q. And said halt?—A. They said halt and then pointed them.

Q. How many of them pointed their guns at you?—A. I didn't stand there and count them. It looked to me like everyone of them.

Q. You thought it was time for you to go?—A. Yes, sir.

Q. Did it seem to you like all of them?—A. Yes, sir.

Q. Now go back to this man. How many of the five had on coats and how many had none?—A. I didn't count them; there might have been two or three in there that had on coats.

Q. Were there two or three, in your best judgment?—A. I wouldn't tell you for a fact that there was that many.

Q. Were the balance in their shirt sleeves?—A. Yes, sir.

Q. What kind of shirts?—A. Had on blue shirts.

Q. What color blue? There are a good many shades of blue.—A. It wasn't a righ deep blue; you might say a little bit of a light blue.

Q. How many of them had on this little bit of a light-blue shirt?—A. I didn't count them, either; there might have been two or three.

Q. Now, this tall, slim, very black negro that you saw and got that fleeting glimpse of him when he glanced his eye back, how was he dressed?—A. He had on khaki breeches and he was in his shirt sleeves.

Q. He had on this little light-blue shirt?—A. Had on a light-blue shirt; yes, sir.

Q. Were there any saddle-colored negroes among them?—A. I didn t notice any saddle-colored negroes.

Q. In fact, that is the only glance you say you got of the complexions?—A. That is the only one I would say positively as to the color of.

Q. Why did you go into Mr. Tate's house that night?—A. I thought they had been shooting into Mr. Tate's house.

Q. How long did you stay there?—A. I stayed in Mr. Tate's house between ten and fifteen minutes.

Q. How were you dressed?—A. I had on a pair of shoes and pants.

Q. What color, I mean?—A. I believe my pants were black that night. I don't remember just exactly what color of pants I had on.

Q. Who did you see in Mr. Tate's house?—A. I seen Mr. Tate, his two boys, and Mrs. Tate, I believe was in there.

Q. That is all that you saw?—A. That is all I seen. I knew it were them. It was dark in the house. That was all the people that I noticed in the room.

Q. Did you go in and sit down?—A. Yes, sir; I went in and got to the window.

Q. Did you tell Mr. Tate that you recognized this tall slim man?—A. I couldn't say that I did.

Q. Did you tell him there were negro soldiers firing into his house that night?—A. I don't remember much about the conversation Mr. Tate and I had; we both knew they were the negroes.

Q. You both knew it?—A. We didn't have to be told.

Q. Mr. Tate didn't have to be told?—A. I guess not.

Q. Did you discuss it with Mr. Tate?—A. Why, certainly we discussed it.

Q. Did you tell him that you had recognized them positively?—A I can't say.

Q. Will you say you didn't?—A. No, sir.

Q. Did you tell anybody in that house that night that you recognized the darky soldiers?—A. I can't say that I did.

Q. Who was the first person you ever did tell that you recognized them?—A. I told Mr. Creager; he was the first person I ever told.

Q. Was that before or after Mr. Purdy was down there?—A. That was after Mr. Purdy was there.

Q. The first person that you ever told that you recognized these negroes was Mr. Creager?—A. That is the first party I remember of. I probably talked it to a couple of hundred on the streets at different times.

Q. Well, did you?—A. I expect I did.

Q. Was it generally known in the city of Brownsville that you knew of this—that you could positively identify these men?—A. I can't say that it was.

Q. If you had talked to a couple of hundred of them that you could identify them, wouldn't it be generally known?—A. I expect it would.

Q. Is Brownsville such a big city that if you told 200 people that you could identify these negroes that it would not be generally known?—A. Brownsville certainly was big——

Q. About 5,000 people?—A. Yes, sir.

Q. Now, you say you told 200 people?—A. I said I might have.

Q. What is your best recollection?—A. You have got my recollection right there.

Q. Then your recollection is you did tell that number?—A. My recollection is I don't remember speaking of any certain part of it. I remember that we talked about it every day on the street.

Q. You told me just awhile ago that the first person you ever told that you identified these negroes was Mr. Creager.—A. I told you

awhile ago that the first person I have any positive recollection of talking this matter over with or telling that I recognized this negro was Mr. Creager.

Q. And that was after Mr. Purdy was down there?—A. Yes, sir.

Q. And he was down there when?—A. I don't know just exactly the day.

Q. Wasn't it about November or December?—A. No; it was a long time after that, sometime this year.

Q. Was it, say, sometime in January?—A. Sometime in January.

Q. That was some five or six months after the thing occurred, wasn't it?—A. It might have been somewhere about that time.

Q. Are there any papers published in the city of Brownsville?—A. Yes, sir; there is one and sometimes there is two.

Q. What are they?—A. Brownsville Herald and Riverside.

Q. And did you read them?—A. Yes, sir.

Q. Had you read any accounts of this at all?—A. I have.

Q. Accounts of this outrage at Brownsville?—A. The Brownsville Herald had something in it about every day.

Q. And you read them?—A. Yes, sir.

Q. And you talked with the people pretty generally about it?—A. Yes, sir.

Q. Who did you talk to?—A. If I must tell you who I talked to—I can't tell you any one person—you can take any American man around Brownsville and I have had something to say to him about it.

Q. But you don't recall having told anybody positively that you identified those men until you told Mr. Creager?—A. No, sir.

REDIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. How far from the street light were these men that you testify as having seen on the corner of Washington and Thirteenth streets?—A. They might have been, when I first seen them, between 20 and 30 feet.

(The reporter read the last question and answer at the request of counsel for the accused.)

(The witness was then excused.)

The judge-advocate:

I will state for the information of the court and counsel that I have outside at least two witnesses whom I can call into court if the court so desire, but I am informed by the reporter that he has enough shorthand matter to keep him busy until near 5 o'clock in the morning; by working all night he can probably get the record ready in time, although if we continue he will probably be unable to present the proceedings at 10 o'clock in the morning. I would like to hear the court's pleasure on that.

At 4.15 p. m. the court adjourned to meet at 10 o'clock a. m. the following day, Tuesday, February 19, 1907.

CHAS. E. HAY, Jr.,
Captain and Judge-Advocate, Judge-Advocate.

THE PENROSE COURT-MARTIAL—Continued.

PART 2.

FEBRUARY 19, 20, 21, AND 22, 1907.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., February 19, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocate. The accused, his counsels, and the reporter were also present.

The reading of the proceedings of February 18 was dispensed with.

Dr. C. H. THORN, a witness for the prosecution, was duly sworn, and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please give your name, residence, and your occupation.—A. My name is C. H. Thorn. Charles Hightower Thorn. I live in Brownsville, Cameron County, Tex. Occupation, a dentist.

Q. How long have you resided in Brownsville?—A. I have been there since February, 1883.

Q. Are you a native Texan?—A. No, I was born in Camden, Ark., but was raised in Texas; came to Texas when I was a child.

Q. Will you please go to the map and point out, if you can, your place of residence?—A. (Witness indicates on map building marked No. 4.) I was right there. Excuse me for being a little too fast, but part of the building is brick, the front part; this back part is frame building, and this is represented as brick, too, but it should not be, this back part from here back is frame, and I was in this room here, the second room from the alley; first is the kitchen and next dining room, and I was sleeping in the dining room.

Q. Where were you on the night of August 13, 1906?—A. I was at home.

Q. Did anything unusual occur upon this night? If so, describe fully.—A. I had just retired, between half past 11 and 12 o'clock. I was not sleeping, but just about to go to sleep, just dozing off, when I heard some shots fired. At first I paid no particular attention, didn't even sit up in bed, but in a few minutes, or few seconds rather, the firing continued and I raised up in bed and listened.

Q. Continue.—A. The sound of the firing was to my right, or down toward the garrison, and after a little while it seemed to grow nearer. After listening a moment or two I concluded I would get up and go to the alley door, or not exactly to the door, but I intended to look out, either through the window or some lattice-work over a shed by the side of the kitchen.

Q. Was your room on the first or second floor?—A. On the first floor—ground floor.

Q. Continue. Tell everything.—A. I felt with my feet on the wrong side of the bed for my slippers—didn't find them. I finally reached over on the opposite side of the bed and got the slippers and put them on. I had been listening to the firing all the time. Just as I had put my slippers on I heard voices just out in the alley. There is a door and a window opening from my kitchen into the alley; the door was closed but the window open, the blinds, however, closed, and it seemed just outside these blinds I heard the voices.

Q. Did you look out?—A. No, I was still sitting up in bed. The door of my room and the kitchen door was open and I could hear, at first as they came on, voices in a low tone I could not distinguish, or if I heard any particular words I don't remember what it was, but I knew from the sound of the voices that they were negroes; they were not Mexicans or white men talking.

Q. Is there a difference between the voice of a negro and the voice of a Southern white man?—A. I think there is.

Q. You readily detected it?—A. Well, there is certainly a difference in the voices of negroes and most of the people of Brownsville.

Q. What did these voices say, if anything?—A. About the only words I heard distinctly was a voice raised in a little louder tone saying either "There they go" or "There he goes," I don't remember exactly which, but I understood they meant they saw some one either down in the alley or going across Thirteenth street.

Q. About the time you heard this remark had the men passed your house?—A. They were just passing by, a little to the left of the window and door, probably about the edge of my premises, the alley.

Q. From the sound of the voices or the sound of the footsteps could you tell about how many men there were?—A. I could not hear a footstep; that was peculiar; I don't remember hearing a footstep at all, but I could hear loud breathing, as if men panting from exertion or excitement.

Q. From the progress of these sounds were the men moving rapidly or not?—A. No; they did not seem to be moving especially rapidly, because I heard shots as they came on down. Just at the moment I heard the talking there was no shots fired, but immediately I heard this man say "There he goes," or "There they go;" another says "Give them hell, give them hell," and immediately the firing commenced again, and just as it commenced again I heard another man, or maybe the same man that says "Give them hell," say "God damn;" whether that was merely an exclamation or whether there was an addition of "God damn 'em," I am not right sure. I think the firing interrupted my hearing that clearly.

Q. When you heard this firing of which you have just spoken, apparently how far had they progressed beyond your house?—A. Only a few feet; probably a few steps.

Q. Did this last firing continue for any length of time?—A. Yes; it continued on down the alley toward Miller Hotel for some time.

Q. Continuous firing, or how?—A. No; it seemed several were firing at the same time, then again one shot, then two, and so on. It was impossible to tell the exact number of shots, because sometimes four or five were fired almost the same instant.

Q. Was there any interval of silence after this last firing?—A. Yes.

Q. But was there firing after that?—A. Oh, yes.

Q. Describe that.—A. I heard firing that seemed to me to be down in Thirteenth street, and then further off down in the alley between Thirteenth and Fourteenth. I got that wrong; that was not Thirteenth and Fourteenth—between Thirteenth and Twelfth, going the other way.

Q. Are you familiar with firearms?—A. Yes, sir.

Q. How did you gain this familiarity or knowledge?—A. Well, when I was, I suppose, not more than 8 or 9 years of age my father

gave me a gun. I had some uncles that had pistols and guns of almost all kinds in use at that time. Afterwards I moved out west of San Antonio, when the Indians were still making raids out there, and I had Winchesters and six-shooters—in fact, up to the last five or six years I have always owned firearms of some kind.

Q. Are you familiar with the various reports made by firearms?—A. Yes, sir.

Q. Judging from the reports made by the guns fired upon this night, what did you think they were?—A. Well, most of them, I was satisfied, were army guns—that is, improved Springfield guns, or rifles. I heard some shots that I am satisfied were pistol shots.

Q. What led you to believe they were army guns?—A. Difference in the reports.

Q. Do you know of any gun owned by anyone in Brownsville that would have made a report like these guns you speak of?—A. I do not.

Q. Please tell the court how long all the firing continued, from the time you heard the first shots until you heard the last ones.—A. I did not look at a watch or clock during the time or afterwards, but to the best of my knowledge, between ten and fifteen minutes.

Q. Did you hear any bugle calls that night?—A. I did; yes.

Q. Do you remember at what stage of the proceedings this call sounded?—A. Not exactly; I heard two or three calls after the firing commenced; I don't remember whether there was any after the firing ceased or not; I am not sure about that.

Q. Were you alone in your house that night?—A. I was alone in that room; my mother was in a room in the brick part of the house just in front of my room. Judge Bartlett, the county judge, was also in a room downstairs.

Q. Do you usually go to bed as late as half past 11?—A. No.

Q. How did it happen you were up as late as half past 11 upon the night in question?—A. Well, we had a meeting of the Masonic lodge; it was a called communication.

Q. Where is this Masonic lodge?—A. It is in the Combe Building, on Elizabeth street, near the Federal building.

Q. You heard no suspicious sounds at all as you were coming home?—A. No.

Q. About the time you heard the remark, "There he goes," or "There they go," did you hear any sound of a horse moving through the streets anywhere?—A. I don't remember that I did. My attention was attracted in the opposite direction, on the right.

CROSS-EXAMINATION.

QUESTIONS BY THE ACCUSED.

Q. How old are you, Doctor?—A. Fifty years.

Q. You testified before the Citizens' Committee?—A. I did.

Q. And subsequently testified before Mr. Purdy?—A. Yes, sir.

Q. When did you tell Mr. Purdy you went to bed?—A. I think it was somewhere between half past 11 and 12.

Q. When you testified before Mr. Purdy were you given an opportunity to read over your evidence?—A. I was.

Q. And you did read it over?—A. Yes, sir.

Q. Signed it and swore to it?—A. Yes, sir; made one or two corrections.

Q. I will read: "Q. At what time had you retired on that evening?—A. Well, I think it was about 11 o'clock, or something after 11, maybe half past 11." When did you change your mind that it was between half past 11 and 12?—A. Well, I don't know; I didn't remember looking at my watch—didn't remember the exact time; it was only guess.

Q. When did you make up your mind to guess differently before this court from what you guessed before Mr. Purdy?—A. That's hard to say.

Q. It must have been subsequent to your evidence to Mr. Purdy, was it not?—A. I suppose so.

Q. Have you talked this over with any other witnesses?—A. Oh, quite a number of times.

Q. Who?—A. Possibly half of those who were up here of the white citizens—Mr. Rendall, Dennett, Kleiber, Creager, Evans——

Q. Discussed it with all those since you have been up here?—A. I don't know that I have since I have been up here, but at different times.

Q. Did you tell your story before the grand jury?—A. I think I did.

Q. Are you positive that you did?—A. No; I am not.

Q. Why can't you remember with positiveness whether or not you testified before a grand jury on so important a matter as this?—A. If I testified at all they asked a very few questions; it seems to me I did testify.

Q. What points did you cover in your testimony there?—A. Probably the same things.

Q. Did you cover the same things?—A. I suppose so; I don't remember.

Q. Can you remember any of the testimony you gave there?—A. No; I don't remember any other testimony except what I have given here.

Q. Can't remember anything you testified before the grand jury?—A. Well, I testified about some of the things; I suppose I might have added more.

Q. Tell us what you testified to—the points you covered before the grand jury?—A. That is hearing the voices in the alley that I recognized to be the voices of negroes.

Q. That the only thing you testified to before the grand jury?—A. Practically the only thing.

Q. Will you swear to this court it is the only thing?—A. No; certainly not.

Q. Is it all you recall?—A. All I recall of any importance.

Q. Never mind the importance; we want to know whether you testified to any other matters pertaining to this?—A. Possibly I did; I don't remember what it was.

Q. How long were you before the grand jury?—A. Only a few minutes.

Q. When did you testify before the Citizens' Committee?—A. I don't remember whether it was the morning of the 14th or 15th, or whether it was in the afternoon, even. It was either on the 14th or 15th.

Q. You attempted to put that committee in possession of all the facts you knew that bore directly on this case, did you not?—A. I did; yes, sir.

Q. I will read to you: "Question by the committee: Tell the committee what you know.—A. I know nothing except what I heard. I heard the firing when it commenced and supposed there was a rampage. I was in bed. There was only a thin wall between me and the alley. I heard one man say, 'There he goes' or 'There they go' or 'There he is,' then another spoke in a loud voice, 'Give them—or him—hell' and louder still, 'God damn him.' It was a negro's voice. Three bullets went into my house; I did not hear them go back down that alley, for I got up and went down town." That's all you told the committee, isn't it?—A. I think so.

Q. Then all the rest of your evidence has been accumulated in your mind since that time?—A. Possibly I did not think of it at the time.

Q. Wasn't it your purpose to help the Citizens' Committee of your town to get all the facts they could?—A. It was.

Q. But at that time you could not conscientiously tell this committee there were negro soldiers there?—A. I could have done so.

Q. Why didn't you? Wasn't that the thing they were trying to get at?—A. I said it was a negro's voice; I would have told them if they asked me.

Q. Didn't they ask you this question, "Tell the committee what you know?" Does not that call for everything you know? Does not that question call for all you knew about it?—A. I suppose so, if it does——

Q. You have stated it was your purpose to put the committee in possession of everything that you knew that would tend to show who did that; isn't that true? Why didn't you tell them?—A. I think I did probably tell them everything I could think of.

Q. Will you swear you did tell them more than is recorded here?—A. No, I won't; but I think I did.

Q. Will you swear you told the members of that committee it was negro soldiers, as you have testified here?—A. I won't swear I did, for possibly I did not.

Q. As a matter of fact, isn't that all you can recall that you told that committee?—A. I don't think it is, sir; I think I told them more than that.

Q. What more did you tell them?—A. I think I told them a lot that was said by a negro girl that was cooking for me, but of course, that was only hearsay testimony.

Q. What else did you tell them?—A. Really I don't remember.

Q. Is that all you can remember?—A. That's about all I can remember.

Q. Then, as a matter of fact, all of those details you gave Mr. Purdy and none of which you remember having told the grand jury, you accumulated since that time?—A. Well, I have remembered.

Q. I will ask you again: Is there anything else further than what you have told to this court that you can remember having told to that grand jury?—A. To the grand jury? I don't remember that there is; they asked me a very few questions.

Q. I have asked you to tell us everything you told that grand jury, and you attempted to do it; I intended to give you ample time; now I

want to know if you have omitted anything?—A. I don't remember that I have, sir.

Q. Then this repeated here—what you have told the court about the grand jury, and the addition to this before the committee about the negro girl in your house, is all you can remember having told either of them?—A. You mean the Citizens' Committee?

Q. Yes, the Citizens' Committee.—A. Or the grand jury?

Q. Can you remember anything more that you told either the Citizens' Committee or the grand jury, further than you have told this court here now?—A. No, I do not. I may have told them more; I don't remember.

Q. Did you tell them more?—A. I don't know.

Q. What's your best recollection?—A. My recollection is that I did tell them more, but I don't remember what it was.

Q. You can't give us any idea what it was?—A. If I told them anything more it was what I have been testifying to this morning.

Q. Will you swear you told them what you have been testifying to this morning?—A. I won't swear I told them all I have testified to this morning.

Q. Why can't you remember that?—A. Because it has been a good while since I testified——

Q. Wasn't the testimony before the grand jury a short——A. Short time afterwards, yes.

Q. So these events occurred before you testified before the grand jury?—A. Yes.

Q. Then these events are of longer standing than the others; isn't that true? Then why do you remember this so much more distinctly?—A. I remember these events, but I don't remember what I testified to.

Q. What did you mean when you told that committee there was only a thin wall between you and the alley?—A. Well, it was just simply weatherboarding, and the weatherboarding and the wall of the building was broken by folding doors which were not closely closed, and the window, the sash of which was up but the blinds closed.

Q. Haven't you told this court this morning there was a kitchen between you and this alley?—A. Yes, sir.

Q. Was your bed directly in front of the doorway from the dining room to the kitchen?—A. It was, right in front.

Q. Was that what you meant—there was just a thin wall at the back of the house between you and them?—A. Yes, sir.

Q. What did you mean when you said before the Citizens' Committee you heard the firing when it commenced and supposed there was a rampage? What did you mean by rampage?—A. Well, I certainly supposed that the soldiers were firing at one or two of the policemen.

Q. Why didn't you tell them so at the time?—A. That's what I meant by it. Firing indiscriminately up in the air, making a big noise to terrify the police.

Q. What reason had you to think there was going to be what you call a rampage or a scrap between the police and the soldiers at that time, what reason had you for thinking so?—A. I had no reason for thinking so before it commenced, but from the continuation of the firing and the volume, I was satisfied it must be that.

Q. You didn't say so in that evidence. Your evidence is, "I heard the firing when it commenced and supposed it was a rampage." When I asked you what you referred to by a rampage, you tell this court that by virtue of the firing afterwards you supposed it a fight between the police and the soldiers; is that what you want to adhere to now?—A. I remarked at first that when I first heard the firing I didn't pay much attention to it, but when it continued, of course, I did, and I told the committee—of course I meant the firing as a whole, I didn't mean the first two or three shots.

Q. Why did you limit it, then, as narrated, "I heard the firing when it commenced and supposed it was a rampage?"—A. Probably they got that down not exactly as I said it.

Q. Is it your best recollection now that you said on account of all the firing you considered it a rampage?—A. No; I didn't say on account of all the firing; I meant on account of the firing.

Q. And by a rampage—you are very clear in your mind that at that time you considered it a row between the police and the soldiers, is that true?—A. Yes.

Q. Then when you testified before Mr. Purdy as follows: "Q. Where were those shots? In what direction from your house?—A. They were in the direction of the garrison. I had an idea they were down at Mrs. Leahy's place, because several times disturbances had occurred in that part of the town, and this same officer that was shot was shot right down in the neighborhood two or three years ago."—A. That's correct.

Q. Then you thought at that time it was a row at Mrs. Leahy's?—A. The first shots seemed to be—of course, I was lying down, had my ear on the pillow and it sounded a little farther off and to the left.

Q. When did you modify your opinion as to the location of the shots?—A. Understand, Mrs. Leahy's house I refer to was where Evans and his wife lived.

Q. I know. When did you change your mind about the location of those shots?—A.. Well, I didn't. They sounded of course to me that way.

Q. Do you still think those shots were down there?—A. No; I don't know whether they were or not.

Q. When did you change your mind they were not there?—A. I didn't know where they were.

Q. When did you change your mind those shots that you testified to were, in your opinion, down by the seat of trouble—the Leahy house—were not down there?—A. I heard from other parties who lived nearer and who were up and dressed that the first shots were fired right from about the mouth of the alley, or near the sally port of the garrison—somewhere in that neighborhood.

Q. Then, on the information you subsequently acquired, you have changed your evidence; is that true?—A. No, I haven't. I don't know from my own knowledge where they were.

Q. I want to know now, was that your opinion at the time, that they were over by the old Leahy house where this policeman was shot two or three years before?—A. That's what I thought when I first heard it.

Q. And when you testified differently before this court, you were basing it on that evidence and subsequently acquired evidence?—A.

I am under the impression I didn't testify differently; the shots were still to the right, no matter whether they were at Mrs. Leahy's place where Lon Evans was living or at the sally port—still to the right.

Q. But, in your direct evidence, and I noted it carefully, you said, "In a few seconds the firing continued. I raised up in bed and listened. The sound of the firing was down toward the garrison, seemed to grow nearer."—A. Yes, in both instances it would have been toward the garrison.

Q. Where is the old Leahy house, will you point it out on the map there? The Leahy house I mean, not the Leahy Hotel.—A. It is not represented there.

Q. What's the next street parallel to Adams and east of Adams or rather northeast it would be?—A. I think along about in here.

Q. Isn't that Jefferson street you have just pointed to?—A. I think it is.

Q. As a matter of fact, isn't the place you speak of on the corner of Fifteenth street where it practically joins the Government road, or a little above that, a block northeast of that?—A. I believe it is, sir.

Q. So that this Leahy house, from where you first understood the firing to be, was pretty nearly opposite what represents the noncommissioned officers' quarters up there, isn't it?—A. I think that's about it.

Q. Just about opposite that?—A. Pretty close.

Q. Now, then, explain what you meant when you testified as follows before Mr. Purdy: "Q. Now, you state that when you heard these shots they appeared to be in the direction of the Leahy Hotel?—A. Of course, it seemed in that direction, but I think it was further off than that, the first shots were more to the left." What do you mean by more to the left?—A. That would have been more to the left—to the left of where Mrs. Leahy's hotel is.

Q. Where is Mrs. Leahy's hotel?—A. On the corner of Elizabeth and Fourteenth.

Q. As a matter of fact, isn't it in the same block with you?—A. Yes, sir.

Q. When did you first accumulate the impression it was at the Leahy Hotel?—A. Well, I knew after I raised up in bed that it was much nearer, the firing was nearer and still coming nearer, bound to have been in the back of the hotel or around there—the Leahy Hotel I mean.

Q. Doctor, I have just read carefully your evidence before Mr. Purdy, and with the permission of the court I will ask you to read from the points indicated and, with the court's permission, read it aloud.

(At this point, upon motion of a member of the court, the court was closed, and the accused, his counsels, the witness, the reporter, and the judge-advocate withdrew. Upon the court being opened, the accused, his counsels, the reporter, the witness, and the judge-advocate resumed their seats. No announcement was made.)

Q. Now, I will read as follows: "Q. Now, Doctor, what first attracted your attention?—A. The shooting; I thought there were two or three shots fired; that first attracted my attention, I suppose. Q. Where were those shots? In what direction from your residence?—A. They were in the direction of the garrison; I had an idea they were down at Mrs. Leahy's place, because several times disturbances

had occurred in that part of town, and this same officer that was shot was shot in that neighborhood two or three years ago. Q. Calling your attention to Exhibit A, I will ask you to indicate on this plat just where your dwelling house is situated.—A. It is about the middle of the block, between Thirteenth and Fourteenth streets. Q. Fronting on Elizabeth street?—A. Yes, sir. Q. And abutting on the alley?—A. Yes, sir. Q. You were sleeping in the frame building in rear of the brick building?—A. In the frame building in rear of the brick building. Q. I have indicated your dwelling house by figure 4 on this plat; that correctly indicates the location of your dwelling?—A. Yes, sir. Q. Now, you said when you heard those shots they appeared to be in the direction of the Leahy Hotel?—A. Of course, it seemed in that direction, but I thought it further off than that—the first shots were more to the left. Q. Down near the garrison wall?—A. Yes, sir; seemed to be in the direction of the garrison." Now, these shots referred to here were the first shots you heard?—A. They were.

Q. There is nothing to indicate so there in the evidence, that you had in mind any other or subsequent shots. Then, Doctor, how far does that garrison wall extend?—A. Well, really, I don't know how far; it extends a good ways—probably half a mile.

Q. What's your best recollection?—A. Do you refer, Colonel Glenn, to the brick wall or to the line of the garrison?

Q. I refer to what is generally known as the garrison wall; where does that extend in the direction a little north of east, how far?—A. The brick wall doesn't extend but a little ways, but in referring to the garrison wall I intended, I suppose at least, generally speaking, in speaking of the garrison wall I mean the line. It's a picket fence, I think, or a wire fence, after the wall ceases.

Q. Where does the wire fence commence?—A. I think it commences somewhere between—along about Adams street; I am not sure.

Q. As a matter of fact, Doctor, doesn't that wall terminate just about the end of the last barracks there? You understand the plat.—A. The last? I think it does.

Q. And from that on——A. From that on it is a wire fence.

Q. Then, as a matter of fact, isn't the Leahy house, where you said this shooting was, isn't that way beyond the garrison wall?—A. Way beyond the brick wall?

Q. About two blocks?—A. I don't know whether that far, it is certainly beyond—there is no brick wall at the Leahy property.

Q. Then that first firing was not directly where you said—by the garrison wall?—A. It seemed to me to be further to the left—that is, further to the left of the brick wall.

Q. As you have now explained it, wasn't that beyond the garrison wall, as a matter of fact, in an easterly direction, or, to be accurate, a little north of east?—A. As it sounded to me it was in that direction; of course I couldn't locate it.

Q. Will you look at the map, and from your own house what is, as near as you can figure it, the actual direction of the Leahy house? You see the indicator at the top and the point indicates north. Tell the court what that direction is.—A. That would be east, I think.

Q. As near east as you could figure it out practically? Then the first shots were there in that bad-land district, as you understood it

that night? That is your impression—that's what we want?—A. That's where I thought the first shots were.

Q. How long after that before you located shots nearer to you? How much shooting had been done before that?—A. I don't remember how many shots, probably anywhere from three to six, maybe a dozen.

Q. Anywhere from three to six shots fired before you accumulated the impression in your mind at the time, that it was nearer to you—nearer down toward the garrison? When you got that impression that it was nearer down toward the garrison, how much shooting was done?—A. I didn't mean nearer the garrison particularly, but nearer to me.

Q. I mean that. Where did it seem to be?—A. About on my right.

Q. Tell the court.—A. Of course, if it was on my right it would be toward the garrison; I didn't mean exactly toward the garrison wall, but in that direction, toward the right.

Q. There's the map. Will you show us about where it was? I want to know, because this is important. Where was it?—A. The first firing may have been down in here, anywhere along in there, to my right, and as I said, further off. (Witness indicated the space—location of the Leahy house; then dragged his pointer over toward the noncommissioned officers' quarters and worked it down toward C Company barracks, covering quite an extensive area—as far as B Company barracks.)

Q. So you thought it was all in that area that you have last described?—A. All upon my right, in that direction.

Q. Is that as accurate as you care to be in your testimony?—A. That's about as accurate as I could be.

Q. That's as near as you could locate it?—A. It is.

Q. Now, where was the firing when you first located it accurately?—A. Well, really I could not locate it accurately until it was right in the alley, right back of my place.

Q. Not until it was back of your place?—A. When I heard the firing just previous to that, of course I knew it was somewhere about the Leahy Hotel.

Q. How did you know it?—A. By the sound.

Q. Then you did locate it accurately?—A. It might have been in Fourteenth street; it might have been in the alley between Fourteenth street and the garrison wall—anywhere in that neighborhood—but within, say, half a block. I could locate it distinctly, but I could not tell exactly where it was, of course; quite a number of shots fired; some might have been one place and some another.

Q. Did you at any time that night locate any shots by the Leahy Hotel? If so, tell the court what ones, and at what stage of the proceedings.—A. Yes.

Q. When?—A. I heard shots back of the Leahy Hotel in the street—that is, where the alley crosses the street.

Q. Then you located that before or after the firing back of your house?—A. Before.

Q. Then that's the first shooting you accurately located, was it?—A. Of course, when speaking of accurately locating, I could locate it within half a block, you see—probably 40 or 50 feet. That's about as accurately as I could locate that firing up there.

Q. When did you first go back to that thin partition that separated you from the alley?—A. The next morning.

Q. Not until the next morning?—A. Not until the next morning.

Q. Did you go into the kitchen at all that night?—A. I did not.

Q. Then you were mistaken when you said in your direct evidence you went back there?—A. That night?

Q. I mean your direct evidence here this morning.—A. I don't think I said that.

(At the request of counsel, evidence page 753 [359] was read.)

Q. All right; I misnoted it. Doctor, did you go to bed on the wrong side or get up on the wrong side that night?—A. I went to bed on the wrong side.

Q. But you got up on the wrong side to get your slippers?—A. I was feeling for the slippers on the wrong side—that's why—that is, from where I left them.

Q. How was your bed located that night, Doctor?—A. It was pulled out almost in the center of the room.

Q. Will you, as near as you can, tell me how the head and foot rested, with respect to the points of the compass?—A. The foot of the bed was east and the head of the bed west. Not exactly that, but the foot was northeast, so that the foot of the bed was toward the door opening into the kitchen.

Q. It ran parallel to the walls of the house, did it—the bed?—A. Almost; yes.

Q. Then when you speak of the right you mean toward the garrison?—A. On my right side I mean toward the garrison; on my left toward the town.

Q. That's what I wanted to bring out and clear up. Doctor, in your first evidence you testified positively about this speech. Among other things you said that he said "God damn him." Now, in your evidence now you remember with considerable particularity that you don't know whether he said "God damn him" or he said "God damn;" that there was some firing intervened, although you had just stated that there was no firing intervened. What did you mean by that? Which is correct?—A. Well, as nearly as I remember, when the firing commenced there was probably two or three shots fired at once; then, probably after just a second, there was other shots fired; and it may be that I heard that "God damn him" or "God damn them." I don't remember how that was; but I certainly heard the expression "God damn," but whether it was "him" or "them," or simply an exclamation, I don't remember. If I said it was "God damn him" I suppose that was right.

Q. You told Mr. Purdy, "God damn them, give 'em hell."—A. That expression wasn't distinct; it was more nearly as I understand it, or heard it, "Give 'em hell." Might have been him or they it referred to. "Give 'em hell," said quickly.

Q. When did you first make up your mind that they were going down toward Thirteenth street, and that they went between Thirteenth and Twelfth?—A. Why, I could hear the firing distinctly.

Q. When did you make up your mind, Doctor, as to these two points I asked you?—A. Right at the time.

Q. Why didn't you tell the committee?—A. Didn't ask it, I guess.

Q. Why didn't you tell Mr. Purdy?—A. He didn't ask it; at least I don't remember he did. If he did I would have told him so.

Q. Any negroes living in Brownsville, Doctor, before the colored troops were sent there?—A. Yes, sir; a few.

Q. How many?—A. Well, let's see; George Watson's family——

Q. You need not name them; just tell us.—A. Probably half dozen.

Q. Half dozen men?—A. Yes.

Q. Did some come in with the colored troops who were not soldiers?—A. Possibly. If they did, I don't know anything about it.

Q. But you know all of those you mention as being there previous to the arrival of the Twenty-fifth Infantry?—A. Yes; I knew all those well.

Q. Could any of them have been with this party?—A. Well, it's possible, of course, but not at all probable.

Q. Could you distinguish between their voices and those of the soldiers?—A. I don't know that I could. There's one or two of them I am satisfied I would recognize their voices, being well acquainted with them.

Q. Might the others have been in there and talking in the negro voice, what you described as the negro voice?—A. That might be so.

Q. I think you said the only thing you had to identify them as soldiers was the voice, was it not? You didn't see them?—A. I didn't see them.

Q. Was there anything else to identify them as negro soldiers except those voices?—A. By the sound of the guns.

Q. So you took the sound of the voices and the sound of the guns and put them together and made negro soldiers of it, did you?—A. Exactly.

Q. Tell the court what the difference is between the negro voice and the white man's voice, that you are able to detect it so readily.—A. I don't know as I could explain that. You might ask me the same question, why I could recognize a Mexican's voice.

Q. I probably will, but I would like to have you tell the other first. Tell the court.—A. I don't know as I could tell, exactly. I was raised on a farm with negroes and I can certainly distinguish their voices.

Q. Yet you can't tell the difference?—A. I can't tell exactly what makes the difference.

Q. You mean to state to this court that there is not lots of white men all through the South that talk so much like a negro that you can't tell the difference?—A. Of course, they use practically the same language; but at the same time their voices are different.

Q. (Question repeated.)

A. I don't think there's many; might be a few, of course.

Q. And you won't tell us what there is in the negro's voice that separates it so distinctly in your mind from lots of white men's voices in the South?—A. I can't tell exactly what peculiarity it has.

Q. Is it so indefinable that you can't describe it?—A. I am not a specialist on sounds and human voices, and I can't tell. I don't know why it is, I know there is a difference and a decided difference, but what makes the difference I don't know.

Q. You won't tell the court anything further than that as a mark

of distinction in the voices?—A. I can't tell the court anything I don't know, but I don't know why that is.

Q. Then you don't know what the difference is between the white man's voice and the negro's voice?—A. I recognize the difference between the two voices when I hear them, but I don't know what causes the difference.

Q. My old professor used to tell me, Doctor, that if I knew a thing I could tell it, and I have learned to believe very strongly in what he said. Can you now tell us any distinguishing mark at all that is tangible that enables you to distinguish the white man's voice of the South from the negro's voice?—A. I suppose it is merely a difference in race characteristics; they have different colored skin, they have different hair, they have different voices.

Q. Does a different colored skin make a voice sound different?—A. I don't think so.

Q. What does make it sound different, then?—A. As I have said a number of times, I don't know why it is; I don't know why a Mexican's voice sounds different from a negro's or different from what we call the Americano's voice, but there is a difference.

Q. But you can't tell this court what it is?—A. No; I can not.

Q. But you do admit there are some white folks in the South that talk very much like a negro?—A. I have heard them, especially when they talk negro dialect.

Q. Let's turn our attention to this sound on which you are such an expert, gained from your experience on the frontier when the Indians were making raids. When you were on the frontier and the Indians were making raids, did they use steel-jacketed bullets?—A. No.

Q. When did they commence to use them?—A. I don't remember.

Q. Was it before or after you laid away your arms—ceased to have a gun?—A. Before.

Q. Tell us how many of those high-power guns you are familiar with.—A. I am not familiar personally with any of the high-power guns; have never owned any.

Q. You stated you were familiar with the sound of them.—A. Yes, sir.

Q. How many times have you been around the new Springfield rifle and heard it shooting?—A. I was nearer to it that night than ever before.

Q. You are positive that you were near to it?—A. Yes, sir.

Q. Yes; you swore to it. How many times were you near to it?—A. I don't think I ever heard it before.

Q. And yet you swore positively you heard it that night. What's the difference between this you swore was the Springfield and the Mauser that carries the steel-jacketed bullet?—A. They are both high-pressure cartridges.

Q. What's the difference?—A. I don't know; don't think I ever heard a Mauser. I have heard the Krag-Jörgensen.

Q. What's the difference between that and the Krag-Jörgensen?—A. I don't know the difference.

Q. What's the difference between that and the Winchester that shoots the steel-jacketed bullet?—A. I never heard it.

Q. How about the savage that shoots the steel-jacketed bullet?—A. I don't know anything about it.

Q. Then why did you swear to this court that you knew at that time that was the army gun, and that enabled you to say it was negro troops?—A. I am glad you say it was the army gun, because I didn't know whether these troops were armed with the Krag-Jörgensen or the improved Springfield. I heard that the next day, that it was an improved Springfield, from Dr. Fred Combe, but I distinguished readily it was not any gun firing ordinary black powder and, of course, knowing that, I was satisfied that it was the army gun that was used, not only from the sound, but from the number of them used at the same time.

Q. Then, Doctor, explain to this court what you meant by this answer: "Q. So from the voices of those men you concluded they were negro soldiers?—A. Yes, sir; and I could hear distinctly the intonation of the guns; I knew they were army guns, and that there was no such intonation in a Winchester or a six-shooter." You have just testified that you didn't know anything about the Winchester that shoots that same kind of cartridge.—A. Because down there, and in my experience, we don't use any high-pressure cartridges in a Winchester. There may be one or two men in Brownsville who have them shoot these cartridges; I don't know anything about it.

Q. You never saw one and yet you swear here, if I understand the English language, that you knew those were army guns from the intonation and not Winchester guns?—A. Yes.

Q. You mean to repeat that here as being the truth?—A. I do.

Q. And yet you say you never heard a Winchester shoot that high-pressure cartridge?—A. I never.

Q. Now, once more I repeat. So far as you saw and heard that night, and irrespective of your subsequent conversations with other witnesses, the only thing you know about this that enables you to identify these colored troops was the sound of the voices and the intonation of these guns?—A. Exactly.

Q. Which you swore were army guns?—A. Yes, sir.

Q. And you now swear that they were army guns?—A. I do.

Q. And the only thing you have to base that on is the intonation of the gun?—A. And the sound of the voices.

Q. You never saw any of those guns before?—A. Oh, I had seen the guns before; seen them in the hands of the soldiers.

Q. Had you ever examined one of them?—A. No; not closely.

Q. You didn't know anything about the marks on it—how to distinguish it from another gun?—A. Of course, I could distinguish it from another gun by looking at it.

Q. Have you ever compared it with other guns?—A. Not stood them side by side; no.

Q. Where had you heard this gun fired before that night—that you swear is the army gun?—A. As I say, I don't know as I ever heard this improved Springfield fired before. I had heard the others on the target range; I mean the Krags.

Q. Are you familiar with the guns in Brownsville—all of them?—A. Speaking of familiarity with guns, I don't mean to single out any particular gun. As I say, there may be some party—one or two, maybe, possibly more—that have Winchesters shooting high-pressure cartridges—steel-jacketed bullets—but I don't know of any such. I know of a great many who have Winchesters that shoot the ordinary

cartridges, some of them the soft-nose bullets. They use these generally in hunting.

Q. Do you know all the people that have guns in Brownsville?—A. No; not all of them. I know a great many of them.

Q. How many do you know, approximately?—A. Probably 50, in and around Brownsville.

Q. Then the other 150 to 200 that were armed that night—you don't know what kind of arms they had, do you?—A. I don't believe they had any.

Q. Didn't you go downtown that night?—A. I did not; no.

Q. So you don't know anything about the others?—A. I think the others would have done like I would have done if I had gone out at all—just dressed and gone out to find out who was hurt, if any one, and without being armed.

Q. That's simply a thought; you are not swearing to that?—A. No; I could not swear to that.

Q. I think, and I appeal to the record, that you swore there was no gun in Brownsville that would sound like those shots that night?—A. I don't believe it; I don't think there's a single gun in Brownsville that would sound like those; of course, I may possibly be mistaken.

Q. That's what you want to swear to to this court?—A. To the best of my knowledge there is no gun in Brownsville that would make that noise.

Q. But your knowledge is limited to about 50 guns?—A. I could not say to that; of course I have a great many friends that have guns.

Q. As many as 50?—A. I think so.

Q. You said something about hearing some pistol shots; when did you hear those? What part of the proceedings?—A. The first shots I heard I thought they might be pistol shots. As I was lying down then, and not paying any particular attention, of course I could not swear to the sound of those guns, because I did not hear them distinctly, but I certainly heard pistol shots afterwards, after I heard those shots back of my house in the alley. I then heard pistol shots.

Q. So you heard pistol shots both before and after the firing in the alley back of your house?—A. I don't say before—certainly afterwards. I am not sure about the pistol shots first.

Q. How many pistol shots did you hear after that?—A. Certainly as many as 3, possibly more.

Q. Were there more?—A. I could not swear to that. I think there was possibly 5 or 6.

Q. Might there have been more than that?—A. I don't think so. Might possibly have been pistol shots fired exactly at the time the guns were fired and I did not notice the difference, but I certainly did hear as many as 3.

Q. Your trained ear was not trained enough to determine whether there was other pistol firing—mixed shots?—A. I could not distinguish them.

Q. There might have been during that other shooting some shots different from those you are certain were army guns, and you not detect it?—A. There might have been; I didn't notice it if there was.

Q. Well, then, when you testified before Mr. Purdy, as I have read to you, "I knew they were army guns, and there was no such intonation in a Winchester or a six-shooter," what did you mean? You now say there were six-shooter or pistol shots.—A. Well, these pistol shots certainly did not make the same sound as the guns.

Q. Did you say they were mixed up with the other shooting?—A. In between the other shots; yes.

Q. Quite a good deal of pistol shooting?—A. No; only a little, a few shots fired.

Q. Did I understand you to say there might have been and you could not distinguish them?—A. Possibly there might have been a few other pistol shots fired that I did not distinguish.

Q. Might there have been some shots from a repeating pistol?—A. I don't think so.

REDIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Doctor, you have made a statement on cross-examination that you have talked this matter over more or less with other witnesses; have any of these conversations changed your recollection of the affair in any manner?—A. Why, I don't know that they did particularly—certainly did not change the material part of it. That is, what I consider the material part.

Q. When you testified before the Citizens' Committee, do you know whether or not they took down everything you said?—A. I don't think they did; quite sure they did not.

Q. Isn't it possible you might have said much more before that committee than was recorded?—A. I am satisfied I did.

Q. In other words, they reduced to writing merely what they considered of importance?—A. Exactly.

Q. I think you testified you had your head upon the pillow and was almost asleep when you heard the first shots?—A. Yes.

Q. And shortly afterwards you raised up?—A. Yes.

Q. And when you heard these first shots they were in the direction, as you thought then, when you had your head down upon the pillow in a half-drowsy condition——

To this counsel for the accused objected as follows:

It is not fair examination, and I object. Limit yourself to the record and we will not object. He is putting ideas into the witness's mind and we object to that. We have no objections to a perfectly square, open examination, but I do object to putting ideas into the witness's mind. It is not fair.

By the judge-advocate:

May it please the court, if I have misquoted the witness it is not intentional. My idea is that he said he was about asleep. I would like to have that idea cleared up; would like to have the record read.

By the counsel:

Our recollection is that the witness has not said a word about half-drowsy condition. I took him all over that, but if he did say so we withdraw our objection. We appeal to the record.

(At request the record was then read top of page 753 [359].)

By the judge-advocate:

Do I understand the objection of counsel is simply to my choice of terms?

By counsel:

I do.

By the judge-advocate:

In order to placate counsel I will change the form of question.

By the counsel:

It is not necessary to placate counsel; simply change the question.

Q. When you were in this condition, near asleep, you thought the firing near the Leahy residence?

By the counsel:

I understood you to withdraw the question, did you not?

By the judge-advocate:

I am simply reforming it. I will withdraw it and insert it again, if it please the counsel.

(The question was withdrawn by the judge-advocate.)

Q. As I understood you to say, you had your head down on the pillow and were in a condition nearly asleep when you heard the first shots?—A. Yes, sir.

Q. And they sounded in the direction of the Leahy residence?—A. Yes, sir; not the hotel.

Q. I understand. And as soon as you raised your head up you got the direction accurately?

By counsel for accused:

May it please the court, he did not testify to any such thing on cross-examination. I took him over that, and he said first positively and distinctly the first time he fixed the direction accurately was directly behind his house, and he subsequently changed it and said it was at another time, just about the Leahy Hotel. and it is misquoting the record. If you will confine yourself to that we will interpose no objection.

By the judge-advocate:

In order not to take up time with useless arguments, I will withdraw that question.

Q. When you raised your head from the pillow, in what direction were these shots?—A. To the right.

Q. By that what do you mean?—A. Toward the garrison.

Q. You made a statement about the garrison wall; what do you mean by the garrison wall?—A. The brick wall.

Q. But you later qualified that, I think.—A. I mean the boundary of the garrison when I refer to the garrison wall. That's what I intended in the first place, but, of course, there is a difference really between the fence and the brick wall.

Q. Now, if there had been pistol shots fired simultaneously with this rifle fusilade that you described, would you have heard them?—A. I might have heard them; might have noticed the difference if they were close by.

Q. But you did not?—A. I did not.

EXAMINATION BY THE COURT.

Q. Why did you not try to ascertain who were doing the firing that night?—A. I knew who were doing the firing, consequently I did not try to ascertain.

Q. I understand the question to mean other steps than you had taken.—A. As I testified, I knew as well as I could know under the circumstances, from the intonation of the guns and the sound of the voices, that it was the negro soldiers doing the firing—that is, the principal part of the firing. Naturally, I supposed it was the Mexican policemen who were firing the pistol shots.

Q. Did anyone fire into your house on the night of the 13th of August; and if so, did you ascertain who fired them?—A. I didn't know that night that the house had been fired into, and the next morning I found what I thought was three shots had been fired into it. I discovered afterwards that really only one shot had been fired in.

Q. Where did the sound indicate that the pistol shots came from?—A. The pistol shots were on my left.

Q. By left you mean toward town?—A. Yes, sir; down toward town.

Q. How near were they to your house?—A. They seemed about a block.

Q. Where was the shot hole located which hit your house?—A. It went through the weatherboarding in a shed adjoining the kitchen; went through that and grazed a partition, and then—the partition is one wall of a privy that is in one corner under this shed—then it went through the weatherboarding of the kitchen and lodged in an upright, I think, 4 by 6; I cut it out of that afterwards, not for some time afterwards; and the reason I thought there was three places, because when the ball first struck, it struck glancing and it made a hole; the ball struck lengthways and made a long hole there, and the splinters on the inside closed in, looked like two bullet holes; and then where the bullet struck the side of the kitchen, went through the weatherboarding there; from the direction, I thought it had come through the lattice work, and consequently it looked like 3 holes; that is, 2 holes on the wall in the privy and another hole in the weatherboarding of the kitchen. Those houses have been whitewashed. What first attracted my attention the next morning when I went out there was the scales of the lime—whitewash—that was down on the floor.

Q. You said you afterwards cut it out; what do you mean by cutting it out?—A. Cut the ball out; yes, sir.

Q. Will you describe the ball?—A. Yes, sir; I didn't cut it out until Mr. Purdy was down there the last time, because it was rather a difficult place to get at; I had to take a chisel and hammer and chisel it out, and the ball, having only gone through plank, was not mutilated to any great extent; it was practically intact; a little mark on it where I think it had struck a nail; but it was what they call a steel-jacketed ball, with deep grooves from the rifling of the gun on it.

Q. How did you know where it entered and passed out?—A. I could tell from looking through one hole to another, and then where I found the ball, of course.

Q. Where did it lodge?—A. It lodged in my kitchen wall after going through the weatherboarding; it lodged in an upright pine scantling.

Q. Will you kindly describe the direction as near as you can, that the ball took? Explain.—A. It came from the east, from toward

the garrison. Now, I looked through the holes in the wall, and my impression was that it was fired from a house on the corner of that alley back of the Leahy Hotel. There is a frame house there—a Mexican lives in it. I don't think it is represented there, but I can show exactly where it was.

Q. If you will, please.—A. That is the house right there. (Witness indicated on map northwest corner of Fifteenth street and the alley.) When I looked through the hole, it seemed it would have struck this house here, but it didn't; it just missed it, right along that way (indicates with pointer); you see it was near the edge of the house, right there; it was near the alley where the ball went in, right on this corner.

Q. Then, as I understand you, from the location of the entrance of the bullet and the point where it lodged, you judged it came from a height and passed down?—A. No; it seemed to be pretty much on a level.

Q. Then how high, please, was the entrance shot from the ground?—A. The entrance shot was—it must have been all of 6 feet.

Q. And where you found it lodged; was that place——A. There was very little difference.

Q. About what was the difference, to the best of your recollection?—A. Not more than a few inches.

Q. Which was the higher?—A. I think the point where it lodged was a little higher than——

Q. Than the entrance?—A. Yes, sir.

Q. What thickness of material in inches did this bullet pass through before it stopped?—A. I think it only passed through about 4 or 5 inches.

Q. Please state kind of material?—A. Pine. Weatherboarding and inch lumber it was, and then into the upright. I will state there was a peculiarity about that shot to me. In looking through I did not see how that there could have been only such a slight difference between the height of where the ball entered the weatherboarding first and where it lodged and a man standing on the ground at that distance, and if he had been further off you see the house would be in the way. I don't understand how that was; if it had been a glancing shot it would have to strike on a brick building and glance. It seemed to be a glancing shot because the ball where it went through the first board in my shed struck sideways, which would indicate it was a glancing shot, but at the same time there was no brick building for it to glance on, and if it had struck the house from where I thought it was fired from—and I looked at that house and could not find any marks at all.

Q. Will you state whether you found any marks on the bullet indicating that it had struck a brick wall, or anything of that kind?—A. I could not find any marks on it indicating that it had struck a brick wall or anything of that kind; it was not flattened or badly marked.

Q. How many grooves were in this bullet you cut out?—A. I did not count the grooves.

The court then took a recess until 2 o'clock p. m., at which hour the members of the court, the judge-advocate, the accused, his counsel, and the reporter resumed their seats.

Recross-examination of the witness C. H. THORN, who was reminded that he was still under oath.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. Doctor, if you knew, as you stated in your examination before the court, who were doing the firing that night, why didn't you tell the committee so the next morning?—A. I suppose I did.

Q. You swear you did, now?—A. No, I do not.

Q. Well, did you?—A. I don't remember.

Q. The record doesn't say that you did?—A. No, sir.

Q. What is your best recollection?—A. I told them I heard the voices and heard the guns.

Q. Did you tell that committee the next morning that you knew it was the soldiers that did that shooting?—A. I don't think I was asked that direct question.

Q. Why didn't you tell them? You were asked to tell all you knew. If you knew it was soldiers don't you think that was important enough to have told that committee?—A. I think the evidence will say that I told them I heard the voices of the soldiers and the guns and recognized them as army guns.

Q. There is not a line of it in the report of the committee—not a line, and I have read all that the report contains. Now, will you swear to this court that you did tell that committee that they were negroes and that you recognized them as army guns at that time?—A. I don't remember the testimony before the committee.

Q. What is your best recollection?—A. My recollection is if I didn't tell them directly I did so indirectly that I knew and recognized who did the firing.

Q. Here is your testimony before the committee: "Tell the committee what you know.—A. I know nothing except what I heard; I heard the firing when it commenced, and supposed there was a rampage. I was in bed; there was only a thin wall between me and the alley. I heard one man say, 'There he goes' or 'There they go' or 'There he is.' Then another spoke in a loud voice, 'Give him' or 'them hell,' and louder still, 'God damn him.' It was a negro's voice. Three bullets went into my house. I didn't hear them go back down that alley for I got up and went down town." Is there anything in that telling them they were negro soldiers?—A. No; but that testimony is not full.

Q. What is left out?—A. I don't remember all that is left out.

Q. Tell us any one item that was left out?—A. There was quite a lot left out. I think it is very likely that I told them that I recognized it was the negro soldiers that did the shooting.

Q. Will you swear it?—A. I won't swear it, but I am satisfied I did do so.

Q. You are satisfied you did tell them it was negro soldiers that night?—A. Yes, sir.

Q. That is now your firm belief that this was omitted from this record?—A. I think it was; yes, sir.

Q. Is there anything else omitted from this record?—A. I don't remember anything particular.

Q. Did you tell the grand jury it was negro soldiers?—A. I don't know that I told the grand jury directly.

Q. Did you or did you not?—A. I must have told them I recognized the voices as being the voices of the negroes, and the report of the guns as being army guns.

Q. Did you tell them that you knew it was negro soldiers?—A. I don't know that I did tell the committee I knew it was negro soldiers in those words.

Q. Did you state that it was your best belief that it was negro soldiers?—A. If I didn't I could have done so, if they had asked the question.

Q. Why did you omit such an important thing then?—A. Probably because I wasn't asked.

Q. Wasn't you asked by the committee to tell all you knew?—A. I suppose so.

Q. Wouldn't that include as important knowledge that these were negro soldiers that did the shooting?—A. I might have answered the question to the satisfaction of the committee without making that direct assertion.

Q. Wasn't that committee trying its utmost to fix that very fact at that very time, that they were negroes?—A. Yes, sir.

Q. Why did you omit that fact, then?—A. As I said before, I probably answered in such a way that they understood that I knew from the sound of the voices and guns that they were negro soldiers.

Q. You didn't say, as far as the record is concerned, anything about the sound of the guns, did you or did you not?—A. I don't remember.

Q. What is your best recollection?—A. I think I did.

Q. You told them that you recognized those as the new Springfield gun?—A. As army guns.

Q. That is now your firm conviction?—A. Yes, sir.

Q. Did you tell the grand jury that?—A. I think so.

Q. Is that your best recollection?—A. Yes, sir.

Q. So you now swear you told the grand jury?—A. I won't swear it.

Q. Could we not see?—A. Yes, sir; but I don't remember.

Q. That is susceptible of confirmation. They make a record?—A. Yes, sir; but they didn't make a full record.

Q. That is the practice of your grand jury?—A. I have been a member of the grand jury frequently; they take down what they think essential and they omit the balance.

Q. Would a grand jury consider that unessential, that you had detected these fellows and were an expert in that line?—A. I don't know about that.

Q. If not, why did you think it was necessary to tell this court about it?—A. I guess because it was asked me.

Q. Why did you think it was so necessary to tell Mr. Purdy?—A. I suppose he asked me the question.

Q. Your best recollection is that you told the grand jury that you recognized those shots as coming from an army gun?—A. I think so. I certainly did if the question was asked.

Q. Well, what is your best recollection? We don't want any evasion of that; we want to know, because that is valuable.—A. I guess I can't answer unless I remember.

Q. We are entitled to your best recollection, though.—A. Certainly.

Q. What is your best recollection?—A. There has been so much talked about, that you know, and so many committees, and before

Mr. Purdy, and before the grand jury, and before the Citizens' Committee, that I can't remember everything, word for word, as it occurred.

Q. Wasn't there a great deal of talk among the citizens?—A. Yes, sir.

Q. And you are very liable to get those different conversations confused. Is that what you mean to say?—A. More or less; yes, sir.

Q. Doctor, why did you naturally suppose this pistol firing Mexican police?—A. Well, the Mexican policemen were armed with pistols.

Q. And just as soon as you heard a pistol fire you assumed that it was Mexican police?—A. Yes, sir; because they are armed with pistols, and the law against carrying weapons is very stringent down there.

Q. And so when you first heard these pistol shots you assumed that the Mexican police were shooting?—A. I did.

Q. Doctor, what was the sentiment toward the darkies when you first heard the darky soldiers were ordered down there to Brownsville?—A. Well, I heard a number of merchants say they had rather have the negro soldiers than to have the white soldiers.

Q. Did you ever hear any of them say it was a great outrage to send negro soldiers down there?—A. No, sir.

Q. Will you swear you never did?—A. Never did before this occurrence.

Q. Confine yourself to before August 13 last. Did you ever express any regret or any adverse criticism on sending those people down there?—A. No, sir.

Q. You are sure about that?—A. Yes, sir.

Q. Do you know Doctor Edger, of the Army?—A. Yes, sir.

Q. Will you swear to this court that you never expressed adverse criticism of the sending of colored troops down there to Doctor Edger?

To this question the judge-advocate objected as follows:

I understand this cross-examination is on the matter brought out under the questions of the court, and I do not think that this matter was brought out by the questions of the court this morning, and I object to it.

To which counsel for the accused replied:

May it please the court, there is no stage in the proceeding of the examination of a witness that you can not lay the foundation to dispute any statement he sees fit to make. I have just asked this witness specifically whether he knew a certain party, and asked him specifically whether or not he made certain statements to such party, and we now propose to ask further questions, and later on, in regard to this matter, and it is clearly within our rights to ask that this witness be recalled at any stage of the proceedings if we discover matter that we can lay a foundation for dispute of his testimony or any part of the matter he sees fit to testify to.

The accused, his counsel, the reporter, and the judge-advocate then retired, and upon the court being opened, the president announced that—

I am instructed by the court to announce the decision that the objection be not sustained. The question may be answered.

(The reporter read the previous question.)

A. That was before the night of August 13—I am quite sure I never did.

Q. What was the attitude of the Brownsville police toward the American soldiers stationed at Brownsville before August 13?—A. I am sure I don't know anything about that; I never heard anything about it.

Q. Do you mean to say to this court that it was not a matter of conversation in the city of Brownsville generally of the antagonism of the police of Brownsville toward the American soldiers?—A. It could have been among people, but I never heard anything of it.

Q. Wasn't it generally spoken of?—A. Not to my knowledge.

Q. Wasn't it a fact and generally talked of in the city of Brownsville that they were afraid to have the negro soldiers come there for fear of their ravishing the women?—A. Before the 13th?

Q. Yes, sir.—A. No, sir.

Q. You swear that no such talk came to your ears?—A. I swear that I heard no such talk.

Q. Did you hear any talk—adverse talk—generally around Brownsville about the assignment of the colored troops there previous to the 13th of August?—A. Possibly—more likely some of the newcomers spoke that way.

Q. Generally, around the streets?—A. No, sir.

Q. At social gatherings? Or balls?—A. No, sir.

Q. It wasn't general talk, then?—A. Not so far as I heard; however, I will say that I hardly ever attend balls.

Q. I asked you whether or not it wasn't a matter of general talk in the city of Brownsville from the time that order first came there and the antagonism toward the assignment of colored troops out there at Fort Brown in the city of Brownsville?—A. I don't remember any such condition.

Q. There was no opposition that you heard of at all on the part of the business men?—A. As I stated, I might have heard some opposition, but I also heard others say it was better for the place; better for them individually—the merchants.

(The reporter read the previous question and answer.)

Q. Who said that about it being better for the merchants—who said that?—A. I remember two; one was Oscar Sutor and one was a man by the name of Turk who keeps a dry-goods store.

Q. How did these men happen to say that in your hearing?—A. They said that they sold more goods to colored soldiers than they did to the white ones; that the negro soldiers would buy dry goods, notions, more groceries, and things of that kind, and spend less money in the saloons in proportion than the white ones.

Q. Didn't you hear any talk about fixing up separate bars for the negroes?—A. I heard something about it.

Q. Was that pretty generally talked about?—A. Well, I can't say that I talked about it much.

Q. Wasn't it pretty generally talked about the town of Brownsville, is the question?—A. I guess it was.

Q. Well, was it?—A. I suppose so.

Q. That is your best recollection?—A. Americans talked about it.

Q. A good deal of talk about separating them from other people when they would come to drink?—A. I can't say that I heard much talk about it, but I think it was a fact.

Q. Do you mean that the consensus of opinion of Brownsville—the general expression of opinion—was unfavorable to the colored troops

being assigned at Brownsville?—A. I don't know as it was the general opinion; I know some people said that the colored troops in Captain Ayres' command were orderly if not the most orderly that they had had there, at least for the last twenty years, and for that reason the older inhabitants there felt no apprehension of any trouble.

Q. You didn't express yourself as having any fears about these troops in connection with the women of the place?—A. Never thought about it.

REDIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. You spoke this morning of cutting a bullet out of your house. What eventually became of that bullet, or have you it now in your possession?—A. No, I gave it to Mr. Linton who was president [present] when I took it out. Linton is the deputy United States marshal there—William Linton. He turned it over to his nephew, Mr. Creager, United States commissioner, and I think he sent it on to Washington, with others.

Q. You also said this morning, if I remember you correctly, that you heard nothing of any importance, of a horse in the street about the time of the firing in the rear of your house. Did you hear anything else about that time besides the firing?—A. I heard during the firing—in fact, immediately after it commenced, I think right in the rear of my house there in the alley—I heard some yells down to the left; I thought at the time, and it probably was, either on the street or in the alley between Thirteenth and Twelfth streets, somewhere in that neighborhood to the left. It sounded to me like Mexicans, but I could not distinguish what was said. It was something in a loud voice more like yells than anything else.

Q. Were these yells oft repeated?—A. No; I couldn't hear anything said at all but I suppose that it was some one fleeing from the negroes as they were firing. I have never mentioned that before because I didn't think it necessary; it was something that was indistinct—two or three yells it sounded like.

RECROSS-EXAMINATION.

BY COUNSEL FOR THE ACCUSED.

Q. Do you know what become of this bullet that passed out of your possession to your own knowledge?—A. No, sir.

Q. Why did you say that you do know. Do you know whether he gave it to anybody else of your own knowledge? Did you know of your own knowledge what became of it after you gave it to this man you handed it to?—A. Certainly I do not; but he handed me a telegram——

Q. Never mind. You don't know of your own knowledge?—A. That is why I got it out.

Q. When did you make up your mind that this other was important—about hearing these Mexican yells?—A. I don't know as it is important now.

Q. Never thought of it before—never thought to tell anybody of it before?—A. I don't know as I did; possibly I did.

Q. Did you ever tell anybody about it before?—A. I really don't remember; I may have done so.

Q. What is your best recollection?—A. So far as I can recollect, I don't think I spoke to anyone about it.

Q. How long after you heard the first shot was it before those men got directly back of your house?—A. I couldn't tell that; some little time; possibly five minutes or more.

Q. How much more?—A. Might have been six.

Q. Well, what was it? Was it five or six?—A. Really, I don't know.

Q. We want your best judgment? You are testifying with a good deal of particularity about some other things. We want to know.—A. It is very hard to estimate the passage of time under circumstances like those. First I wasn't excited at all, but, of course, after the firing continued and come nearer and there was so much of it, why, naturally I became more excited, and may be a minute seemed to pass like four or five minutes.

Q. Might that excitement have mixed up your recollection on events?—A. To some extent, possibly.

Q. It is just getting clarified now, is it? Give us your best recollection of that time, Doctor, because we want to fix some other events in connection with it?—A. Well, I should say the firing had been going on for—now that I think of it—seven or eight minutes.

Q. When you first heard men firing there back of your house?—A. Yes, sir.

Q. That was the first firing you heard back of your house?—A. Yes, sir.

Q. Now, how long after that was it when you heard these Mexicans yelling?—A. Why, it was not more than a minute, if that long; probably not that length of time. It was almost immediately when the firing commenced; as I heard the voices, the firing had checked up; they had fired one or two shots as they came on down the alley from Fourteenth street, but when I heard those voices I heard them first talking in a low tone of voice; I couldn't distinguish what they said, but I could hear the intonation of the voices and knew they were colored men; as to being able to hear what they said, maybe I could have heard a sentence or two or something of that kind, but I paid no particular attention of it—not enough to remember it. When the firing resumed, it was about that time—certainly not more than a second or two or a few seconds—that I heard the yelling.

Q. You have read the accounts of this in the various papers, haven't you, Doctor?—A. I have.

Q. And might those accounts have sort of fixed these negro soldiers chasing the Mexicans in your mind—fixed this fact in your mind?—A. That is barely possible.

(The witness was then excused.)

FRED TATE, a witness for the prosecution, was then duly sworn and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please tell the court your name, your residence, and your occupation.—A. My name is Fred Tate; I am mounted inspector of customs, stationed at Brownsville.

Q. How long have you been a mounted inspector of customs?—A. I went into the service on the 17th of last April.

Q. Had you been in the service before that?—A. No, sir; I had not.

Q. Do you know Major Penrose?—A. I don't know him; only since I came here, know him only by sight.

Q. Where were you living during the month of August, 1906?—A. In Brownsville.

Q. Brownsville is a garrison town, or was at that time, I believe?—A. Yes, sir.

Q. What kind of soldiers were stationed there at that time?—A. Colored troops.

Q. Did you ever have any difficulty of any kind with any member of the garrison?—A. Yes, sir.

Q. Please describe it fully, giving the date.—A. Well, on the night of August 5, about 9 o'clock, I had some trouble with one.

Q. Tell the court exactly what occurred.—A. On Elizabeth street myself and wife and some ladies—four other ladies—were standing two blocks from the custom-house, right near the corner of the street and a vacant lot, and I stood in the rear, and there were five ladies dressed in white who stood in front. The four ladies were facing south—we were all facing south. I had my little girl, 12 years old, by the hand, and all at once two soldiers pushed in between these ladies, and one pushed my wife with his elbow in the back, and another one—I don't know their names only by hearsay—pushed a Mrs. Wilkins, who is an inspectress in the custom-house, too. I hit the one that pushed my wife.

Q. What did you hit him with?—A. With a six-shooter.

Q. Why did you do this act of violence against this man?—A. Because I thought it was an insult to my wife.

Q. Did you ever hit anybody else before with a six-shooter?—A. No, sir.

Q. Would you do the same thing again under the same circumstances?—A. I would hit any man.

Q. Was there any feeling of animosity against the soldiers by the citizens of Brownville at that time?—A. No, sir.

Q. You hadn't been there very long?—A. No, sir.

Q. After this time did you hear of any remarks addressed about you?—A. Yes, sir; threats came out. I don't know whether they were reliable, though.

Q. Then, you don't know of your own knowledge whether there was any feeling among the soldiers against you or not?—A. No, sir.

Q. Will you describe the sidewalk and the lot where this affair occurred?—A. I don't know the width of the sidewalk, but it was right opposite a vacant lot. Since then a church has been erected

on this vacant lot; still there is about 10 or 15 feet from the edge of the pavement to the entrance to the church, and 25 or 30 feet from where this occurred is a fence.

Q. Was there anything about the condition of this sidewalk which would prevent a man from stepping off and going around?—A. No, sir; they could have walked around on the vacant lot or could have stepped off into the street. It was perhaps a foot down from the sidewalk to the street, but the vacant lot was even with the sidewalk.

Q. On the night of August 13, 1906, were you in Brownsville?—A. Yes, sir.

Q. Where were you about midnight?—A. I was asleep.

Q. Did anyone call at your house that night; if so, about what time?—A. Some one called at the next house.

Q. I mean at your house—into your house?—A. Yes, sir; Mr. Littlefield came. I don't know what time it was; I couldn't see because I had no light and wasn't in a room where there was a clock, anyway.

Q. Had there been any firing going on about this time?—A. Yes, sir.

Q. Was this before or after the firing?—A. After the firing.

Q. Can you tell the court about how long Mr. Littlefield remained in your house?—A. I would suppose ten or fifteen minutes.

Q. Altogether?—A. No, sir; he went out and come back again. I wouldn't like to say positively, but I think ten minutes.

Q. It could have been longer than ten minutes?—A. Well, it could have been fifteen minutes; I hardly think so, though.

Q. About how long after the firing had ceased did Mr. Littlefield arrive?—A. Well, I judge five minutes.

CROSS-EXAMINATION.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. How old are you, Mr. Tate?—A. Forty-six years old.

Q. What had you been doing before you became a mounted inspector of customs?—A. Why, sir, I had farmed and fed cattle, and had been an officer—different occupations.

Q. Lived all your life in the South?—A. Yes, sir.

Q. I understood you to say that you heard of no feeling of animosity toward the colored troops or antagonism expressed around the city of Brownsville?—A. Before they came there?

Q. Yes, sir.—A. No, sir; I do not remember hearing any.

Q. Were you there when the order first came out assigning the colored troops to Brownsville, about the 29th of last May?—A. I must have been there.

Q. Do you mean to say there was no talk of antagonism toward them when they were assigned there?—A. I don't remember of ever hearing anything said about it.

Q. You never heard any opposition to the assignment of them there at all, in the city?—A. No, sir; I did not.

Q. Among none of the people?—A. No, sir; I can't recall it.

Q. You circulated around among the people?—A. No, sir; I don't recall it.

Q. What was the feeling of the inspectors of customs toward soldiers generally?—A. Well, really, I couldn't say; I don't know what their feelings were.

Q. You associated with them pretty regularly?—A. Yes, sir.

Q. Every day?—A. Yes, sir; I was with them nearly every day—some of them.

Q. You never heard any feeling of antagonism toward the colored troops or the white troops?—A. I heard more about the white troops than I did about the colored troops from an inspector stationed up there——

Q. Didn't you hear a great deal about the white troops?—A. No, sir.

Q. Didn't you hear a great deal about the colored troops?—A. No, sir; I can't recall it.

Q. I am talking about among the customs people.—A. Yes, sir; but I can't recall it.

Q. Good deal of smuggling going on down there, Mr. Tate?—A. No, sir; not a great deal.

Q. Very limited, isn't it?—A. Well, right at Brownsville there is a very limited number of them caught.

Q. Was this striking of this colored soldier made a matter of investigation?—A. Yes, sir; there was a letter come to the collector of customs from Major Penrose in regard to it.

Q. When?—A. I couldn't say. I think probably along about the 6th or 7th; I wouldn't be sure about that.

Q. What day of the week was it?—A. That I had the trouble?

Q. That the letter came.—A. I don't know, sir. I wouldn't be sure about that.

Q. Who did the letter come to?—A. It was addressed to the collector of customs.

Q. Who did it come to?—A. Mr. Brown, the entry clerk there, had the letter.

Q. When did you first know of it?—A. He showed me the letter, and I would not be sure whether it was on the 6th or the 7th or the 8th.

Q. Well, was it as early as the 8th?—A. I don't know, sir.

Q. You don't seem to be very definite in your recollection about that?—A. About the letter; no, sir.

Q. Didn't you take some action about it?—A. About the letter?

Q. Yes, sir; when you heard it was made a matter of complaint to your chief, didn't you take any action about it at all? A. The chief wasn't there.

Q. Did you take any action with regard to that matter?—A. I spoke to Mr. Creager, the United States commissioner.

Q. How long after you saw that was it you spoke to Mr. Creager? A. I couldn't say just exactly the date it was.

Q. Well, how long after you saw it?—A. I don't recall the day.

Q. Give us your best recollection as to the length of time that intervened between the time you saw this letter and the time you saw Mr. Creager?—A. Really, I wouldn't be positive about it; it might have been on the 11th or the 12th that I spoke to Mr. Creager.

Q. Then it was several days after the letter was sent to Mr. Brown?—A. Yes, sir. The letter was addressed to the collector of customs.

Q. How was it delivered to the collector of customs?—A. I really don't know, sir.

Q. But you are very certain that several days elapsed between the time this letter was called to your attention and when you went to see Mr. Creager about it?—A. Mr. Creager came to see me; that is my recollection.

Q. Where were you when he came to you about it?—A. I couldn't say just exactly where I was; on the street somewhere, I think, standing along on Elizabeth street, perhaps about the barber shop.

Q. About what time a day was it?—A. I couldn't say.

Q. What is your best recollection?—A. I think in the morning.

Q. Well, near noon or near what hour?—A. Perhaps about 10 o'clock.

Q. That is your best recollection now, eh?—A. Yes, sir.

Q. What did you ask him to do?—A. He told me he was going up there and, if I wanted him to, he would lay this matter before Major Penrose.

Q. Then he was the one that volunteered?—A. I had talked to him about it before.

Q. Where?—A. I don't remember just where; on the street somewhere.

Q. When?—A. I couldn't say what day.

Q. What is your best recollection?—A. Well, I haven't the slightest idea what day it was I talked with him about this.

Q. You had two conversations with him, had you?—A. I think I did.

Q. How much time intervened between the two conversations?—A. I couldn't say.

Q. Give us your best recollection.—A. Well, I couldn't hardly say how many days intervened.

Q. Well, was there a day intervened?—A. Yes, sir.

Q. You are sure it was on different days, then?—A. Yes, sir; I think it was.

Q. When you said that there were three of four days intervened between the time this first coming to your attention that Major Penrose had complained of it and your conversation with Mr. Creager, did you have in mind the first or the second conversation?—A. I don't know, sir.

Q. You don't know which conversation you had in mind?—A. No, sir.

Q. Well, did you have any other conversation with Mr. Creager? Any other conversation about it?—A. Later on I think I did; yes, sir.

Q. When was that?—I made an affidavit before Mr. Creager as United States commissioner—swore to an affidavit.

Q. Was that before or after the 13th of August when you made this affidavit?—A. Well, I couldn't say to save my life, sir; I don't remember. I think after; I wouldn't be positive.

Q. As a matter of fact, wasn't it a week or two after the 13th of August when you made the affidavit before Mr. Creager?—A. I don't think it was that long.

Q. When was it, with respect to the time the colored troops left Brownsville?—A. That I made this affidavit?

Q. Yes.—A. I think it was before that.

Q. What was the feeling of the inspectors of customs toward soldiers generally?—A. Well, really, I couldn't say; I don't know what their feelings were.

Q. You associated with them pretty regularly?—A. Yes, sir.

Q. Every day?—A. Yes, sir; I was with them nearly every day—some of them.

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Q. When was that?—I made an affidavit before Mr. Creager as United States commissioner—swore to an affidavit.

Q. Was that before or after the 13th of August when you made this affidavit?—A. Well, I couldn't say to save my life, sir; I don't remember. I think after; I wouldn't be positive.

Q. As a matter of fact, wasn't it a week or two after the 13th of August when you made the affidavit before Mr. Creager?—A. I don't think it was that long.

Q. When was it, with respect to the time the colored troops left Brownsville?—A. That I made this affidavit?

Q. Yes.—A. I think it was before that.

Q. How long before?—A. I couldn't say, sir.

Q. Well, was it a day or two or week?—A. Well, really, I couldn't answer that because I don't remember. I ain't never made any record of it or anything, and I don't remember.

Q. Well, now, did Mr. Creager go up and see Major Penrose for you?—A. He went up there; yes, sir.

Q. Did he go up there as a friend or as an attorney?—A. Why, he said he was going up in regard to some other matter and he would just lay the case before Major Penrose.

Q. Did he report the result of it in any way?—A. He said something about it; yes, sir.

Q. When?—A. I think maybe the same day.

Q. Was it the same day?—A. I wouldn't be sure.

Q. What did he say?—A. Well, I couldn't repeat his words.

Q. Give us the substance of what he said.—A. That Major Penrose didn't seem to think that his men had done this.

Q. Is that all he said?—A. About all; yes, sir.

Q. Was there any more? If there was any more we would like to know.—A. I don't remember any more.

Q. Can't remember anything more than that?—A. No, sir; that is about all that I can remember.

Q. Did he tell you what he had said to Major Penrose?—A. No, sir.

Q. And the only thing that you can recall that he said about it was that Major Penrose didn't think that his men were what?—A. Didn't think his men were guilty of doing such a thing.

Q. And where were you when he told you this?—A. I couldn't say.

Q. Were you in Brownsville?—A. I was in Brownsville.

Q. Can't give us any more definite idea than that?—A. Nothing more than I was perhaps on Elizabeth street, the main street of the town.

Q. Did you see the letter that Major Penrose wrote to Mr. Vann?—A. Mr. Brown read it to me, but I don't remember the contents.

Q. You didn't actually see it yourself; that is, to read it?—A. I never had it in my hands; no, sir.

Q. What did you tell Mr. Creager when you went to him about it?—A. Why, we were talking and I told him about how it happened, and he said he was going up in regard to another matter and if I cared he would just make a verbal statement to Major Penrose in regard to it.

Q. Did you understand he was going to charge you for this?—A. I don't know whether he was or not.

Q. Didn't know whether he was going to charge you as an attorney or not?—A. No, sir.

Q. But you assented to his going, anyway?—A. Yes, sir; I told him if he wanted to he could state the case to Major Penrose.

Q. You thought he might send you a bill for it?—A. No, sir; I didn't think anything about it.

Q. I wish you would describe to this court exactly where all these people were standing that day on the sidewalk.—A. What day?

Q. That night.—A. Well, it was on Elizabeth street—I don't know what the other street running the other way was. I don't know the name of the streets there, only Washington and Elizabeth streets, which I am familiar with. This was north of the custom-house, on Elizabeth street.

Q. I want you to describe exactly how you people were standing at the time this negro soldier passed by, and how each of the others were standing.—A. The four ladies were facing south, I was facing south, and the little girl was facing south; Mrs. Tootnap was facing north, had stopped—we had met her—and were standing tolerably near together.

Q. How close together were you?—A. Why, the ladies were standing pretty close together; I was, perhaps, 4 feet in the rear, facing south.

Counsel for the accused:

With the permission of the court, I would ask that this witness be requested to show us just how each person [was] stationed that night. He can illustrate that by using members of the audience or anybody he sees fit.

A. I don't know as I could place all of them just as they were.

Counsel for the accused:

We want to see how accurate his recollection is of the people, and then we want to ask him further how these men passed there; we want the court to see how grave that was.

The court:

Go ahead.

(Five men from the audience were requested to come around inside the railing, and were placed by the witness.)

Q. Now, show the court where you stood and where each of these ladies stood.—A. My wife was that way——

Q. We will say that this was the sidewalk between these two chairs.—A. This is north and this is south (indicating directions). Now, the others were talking over on this side.

Q. Now, tell who each of them are, please.—A. I couldn't do that.

Q. Who each of these are supposed to represent?—A. I told you I couldn't place them all. I can place Mrs. Tootnap, and my wife, and Mrs. Wilkins.

Q. Well, place those three.—A. My wife stood here; Mrs. Tootnap was facing her, and Mrs. Wilkins was looking this way, and the man passed right in here.

Q. Where were you?—A. I stood in the rear, perhaps 4 feet.

Q. Four feet in the rear of whom?—A. Of these ladies here looking south.

Q. Were these ladies looking south?—A. All but this one. That is Mrs. Tootnap, and this is my wife; this is Mrs. Wilkins; the other two ladies I can't place. I stood in the rear here.

Q. Now, will you stand back, just about back where you were with respect to your wife?—A. I was about here.

Q. Now, were these other ladies on that side or here?—A. They were on the left-hand side, talking to the lady here.

Q. Those were in conversation, and these two were in conversation?—A. Yes, sir.

Q. Where was your little girl?—A. I was holding her by the right hand.

Q. Now, there must have been some lady there?—A. Yes, sir.

Q. Now, was the sidewalk as wide as here—I mean from where this man stands here to Mrs. Tootnap over about there?—A. There was

the street down there; it was perhaps a foot down to the street; over here was the vacant lot.

Q. About how far was that lady over there?—A. There were two ladies over there facing Mrs. Wilkins.

Q. Then, there were six people, including yourself?—A. I said five ladies and myself and the little girl.

Q. Where was the other lady?—A. She was standing over there somewhere—just exactly where, I don't know.

Q. Now, as I understand, the street was there?—A. The street there and the vacant lot there.

Q. Which way were the men coming?—A. They were coming toward us from the post.

Q. Where did they pass, with respect to these ladies?—A. One pushed against my wife there and the other one rushed Mrs. Wilkins there.

Q. Which one did you strike?—A. The one that run against my wife.

Q. Where was he when you struck him—you were 4 feet behind her?—A. Just as soon as he got out from her.

Q. How close was your wife to the street?—A. Right close.

Q. To the edge of the sidewalk?—A. Within a foot of it, perhaps.

Q. How close were those ladies there to the other edge of the sidewalk?—A. I couldn't say; they might have been right at the edge of it.

Q. How much space was between these two groups of ladies?—A. There wasn't very much.

Q. What is your best recollection?—A. I would judge 2 or 3 feet.

Q. Show us just how much there was.—A. I couldn't do that.

Q. You ought to be able to judge by your recollection. You have testified pretty positive about it.—A. I have testified to the men rushing these two ladies, but I couldn't testify to the distances with any accuracy.

Q. Are they placed as accurate as you can, now?—A. Yes, sir.

Q. Where were you carrying your pistol?—A. Carried it in my pants.

Q. What kind of a pistol was it?—A. Forty-five six-shooter—Colts.

Q. Colts, .45?—A. Yes, sir.

Q. How long after the leading man got through passed your wife before you struck him?—A. Just as quick as I got in reach of him.

Q. Did you have to move to strike him?—A. I think I took a step; yes, sir.

Q. How many times did you hit him?—A. One time.

Q. What was the result of that blow?—A. He fell.

Q. How long did he lie down?—A. Perhaps a minute.

Q. Where did you strike him?—A. I intended to strike him over the head.

Q. Where did you strike him?—A. I couldn't see; it was dark. I never saw him any more.

Q. It was dark?—A. Yes, sir.

Q. How dark a night was it?—A. It was a starlight night.

Q. It was a starlight night but you couldn't see where you hit the man?—A. No, sir; I didn't get down and examine the place.

Q. Did you remain there until he got up?—A. Yes, sir.

Q. How long before he got up?—A. I suppose a minute.

Q. What did you then do?—A. I told him to get out in the street.

Q. Was that all?—A. And told him not to ever run into my wife or any ladies in my company.

Q. Didn't you cover him with your pistol?—A. Yes, sir; I covered him with my pistol when I went back to him.

Q. You kept him covered with your pistol all the time?—A. Yes, sir; until he got up and got out into the street.

Q. How long after he jostled into your wife before the other man jostled against the other lady?—A. It must have been about the same time; they were walking abreast.

Q. What did this man do while you were knocking the other one down?—A. He ran.

Q. Which way?—A. He ran to the east, I think.

Q. Well, with respect to you, was it to your left or right?—A. Ran to my left.

Q. Directly to your left?—A. Yes, sir.

Q. As soon as he struck these ladies and you struck that man, he ran directly to your left?—A. Yes, sir.

Q. Did he strike anybody else?—A. Not that I know of.

Q. If he had you would have known it, wouldn't you?—A. I don't know, sir. He ran away; I had my back turned to him. He ran when I struck the other man.

Q. He ran immediately, did he?—A. Yes, sir; at least, I never saw him any more.

Q. But you know he ran directly to your left?—A. Yes, sir; he went to my left.

Q. And you didn't see him any more?—A. No, sir.

Q. And he must have gone toward the vacant lot, didn't he?—A. Yes, sir.

Q. Now, what side of Elizabeth street was this sidewalk on?—A. On the east side; I think it was the east side.

Q. Are you certain about that?—A. No, sir; I am not very familiar with the streets there. I had only been there a short time when this thing occurred and I am not very familiar with the streets. I know when I am on Elizabeth or Washington street; and the way the railroad goes in there it turns anybody around—it makes a big curve and it is hard to get located there.

Q. How far from the Miller Hotel was it—how many streets from the Miller Hotel?—A. It must be seven or eight blocks—seven blocks or something like that; I don't remember, sir.

The court (addressing witness):

Are you feeling too sick to go on with this?

A. No, sir. I had rather get through with it this evening.

The court:

Do you feel able to get through with it?

A. Yes, sir.

Q. It is your best recollection that it was seven or eight blocks from the Miller Hotel?—A. Six or eight blocks; yes, sir.

Q. That is in the direction of the post or away from the post?—A. Away from the post.

Q. Going from the post, which side of the street was it on?—A. Coming from the post it was on the right-hand side.

Q. How near the corner?—A. I judge, about 10 feet—8 or 10 feet.

Q. Did either of these men say anything about it?—A. The one I struck said "What is the matter, kid?" I said, "There is matter enough; you know what is the matter. You run over these ladies." He said, "Well, I didn't know no better;" I says, "Well, you know better now, don't you?" he said "Yes."

Q. What houses were you near? Who lived in that vicinity?—A. I think Captain Dalzell lived on the opposite side of the street, but I don't know who lived nearest to where this happened; I think a family named Stowe, but I wouldn't be positive about it.

Q. In front of whose house was it?—A. Captain Dalzell's.

Q. What do you mean when you say in your affidavit that these ladies were standing close together?—A. That they were standing tolerably close together.

Q. What do you mean?—A. Standing on the sidewalk pretty close together.

Q. Was there any room on either side of the sidewalk for these people to pass?—A. Yes, sir.

Q. How much?—A. I don't know how much was on the vacant lot—perhaps 20 feet.

Q. I asked you on the sidewalk?—A. I couldn't say; there might have been a foot on the side my wife was on.

Q. That is on the street side?—A. Yes, sir.

Q. Was there any on the other side?—A. I couldn't say positively.

Q. What is your best recollection?—A. I don't know. There might not have been any; it is possible there wasn't any. They might have had the whole sidewalk; I wouldn't be positive about it.

Counsel for the accused:

I think in view of the sickness of the witness we prefer to cross-examine him when he is a little better.

A. I am willing to go through with it. I hate to get sick here in a hotel. My family is sick at home.

The court then took a recess until 3.35 p. m., at which hour the members of the court, the judge-advocate, the accused, his counsel, and the reporter resumed their seats.

Q. It might have been as much as 2 or 3 feet between the ladies on the walk?—A. It might have been 2 feet; yes, sir.

Q. But no more than 2 feet?—A. I couldn't say.

Q. Might there have been as much as 4 feet between them?—A. No, sir.

Q. Might there have been as much as 3 feet?—A. I think 2 feet was all that was between them.

Q. That is your best recollection?—A. Yes, sir.

Q. Where did you first see these men?—A. They couldn't have been over 10 or 12 feet.

Q. How were they walking when you first saw them?—A. Abreast.

Q. Did they break apart at all?—A. Very little.

Q. Do you mean to say they remained abreast up to the time you struck this man?—A. No, sir.

Q. When did they break apart?—A. When they went in between the ladies.

Q. Did they break into single file then?—A. No, sir.

Q. What did they do?—A. They were farther apart than before they got to the ladies.

Q. What do you mean?—A. One went one way and one went the other. They couldn't have walked over the lady.

Q. Did one go to the right and one to the left?—A. One went to the right and one to the left.

Q. Leaving the ladies between them?—A. No, sir.

Q. What do you mean?—A. One came in on the right between the ladies and one came in on the left between the ladies.

Q. That is too much for me, Mr. Tate; I can't grasp it. You had a bunch of ladies standing there, and you said first these men came abreast between these two ladies.—A. They couldn't have been walking arm in arm against them.

Q. I said abreast.—A. One of them came to the left and one to the right.

Q. Left of who?—A. To me. They were coming facing me and one come on the left and one on the right, and the one on the left came in between Mrs. Wilkins and the two young ladies that I had only met that night—I don't remember their names—and the other one passed between Mrs. Tootnap and my wife.

Q. Well, did they have a lady between them at any time, separating them?—A. Yes, sir.

Q. What lady separated them?—A. I couldn't say.

Q. Was it your wife or Mrs. Tootnap?—A. I think it was Mrs. Wilkins.

Q. And who was she talking to?—A. She was talking to two young ladies. I have forgotten their names.

Q. Your wife was talking to Mrs. Tootnap?—A. Yes, sir.

Q. Were they abreast when they passed between your wife and Mrs. Tootnap?—A. One of them was on one side and one on the other; they left Mrs. Wilkins in between them; they left a lady in between them.

Q. I thought you stated your wife was talking to Mrs. Tootnap?—A. She was.

Q. And one passed between her and Mrs. Tootnap?—A. He did, and the other one passed between Mrs. Wilkins and these other ladies.

Q. How did he pass, in respect to Mrs. Tootnap?—A. Didn't touch her.

Q. Did he pass to your right or left of her?—A. He passed to my left of her; she was standing a little bit nearer the sidewalk than my wife.

Q. The man you struck, how did he pass Mrs. Tootnap? To your right or left of her?—A. He passed her to my left; she was standing right near the edge of the sidewalk and my wife——

Q. They were both right near the edge of the sidewalk?—A. Yes, sir; next the street.

Q. Was there anybody between your wife and the opposite side of the sidewalk toward the lot?—A. Yes, sir.

Q. Who was it?—A. Mrs. Wilkins.

Q. Then they both were to your left of your wife and Mrs. Tootnap. Did they both pass to your right of Mrs. Wilkins?—A. No, sir.

Q. Which passed to the right?—A. To my right, the man I struck.

Q. To your right of Mrs. Wilkins, I am asking you about?—A. I was facing south and they were coming north.

Q. Yes. Now, you said one passed Mrs. Wilkins on your right, and the other one passed on your left; is that right?—A. Yes, sir.

Q. Which one passed on your right of Mrs. Wilkins—the one you struck?—A. Yes, sir.

Q. And the other one passed Mrs. Wilkins on your left?—A. Yes, sir.

Q. Where was he when you struck this man?—A. Why, he was right at my back, I suppose; I turned my back on him as I struck this man.

Q. Didn't you strike at him?—A. No, sir; never made any effort to strike at him; he was gone.

Q. He passed behind Mrs. Wilkins, then, didn't he?—A. Yes, sir.

Q. He must have stepped off the sidewalk, then, didn't he—that one?—A. He might have stepped off.

Q. The other one didn't?—A. No, sir.

Q. Then they didn't remain abreast on the sidewalk after they got up to your party?—A. No, sir; they walked between the ladies.

Q. One of them only walked between the ladies?—A. Both of them, is my recollection.

Q. You have just stated your wife and Mrs. Tootnap were standing on the street side of the sidewalk and that Mrs. Wilkins was on the other side facing them?—A. She was kind of facing these other ladies over there, and the one passed that side passes Mrs. Wilkins, and that was on my right, and the one that passed my wife was on my left, and he passed between Mrs. Wilkins and the other ladies.

Q. How close did that first man get to you before you struck him?—A. I don't know, sir.

Q. How close did the second man get to you at any time?—A. I don't know; I was after the other one.

Q. How close were you to these other ladies—these other two ladies?—A. Mrs. Wilkins stood next to my wife and Mrs. Tootnap in front of my wife——

Q. Yes.—A. About 4 feet I guess.

Q. And they were how far toward you from your wife—the other ladies?—A. The other ladies stood beyond Mrs. Wilkins.

Q. Toward you?—A. No, sir; beyond. Mrs. Wilkins was in between me and the other ladies. My wife was here and Mrs. Tootnap and the other ladies over there.

Q. So this man you didn't strike he turned off to the right so as to deliberately pass between Mrs. Wilkins and the other two ladies?—A. I don't know how he turned off; he was gone from there.

Q. You didn't see him?—A. No, sir.

Q. When did you first see him?—A. When they first passed in between them.

Q. Did you see him brush against these ladies?—A. I didn't see him brush against Mrs. Wilkins.

Q. Did you see him brush against anybody?—A. No, sir.

Q. Then, you don't know of your knowledge whether he did or not?—A. No, sir.

Q. Now, I will read your affidavit that you swore to, in which you say, "On reaching the ladies who was standing close together in the middle of the sidewalk the negroes, instead of stepping around them, as they could easily have done, since there was a vacant lot on one side and a street on the other, pushed and elbowed their way through them, rubbing and jostling them as they crowded through; my wife, who was standing next to me, was rudely jostled by one of them." Is that the way you want it understood?—A. That my wife was rudely jostled by one of them?

Q. You said they both were jostled.

(The reporter read the last answer.)

Q. You said they pushed and elbowed their way through them, jostling and rubbing against them as they crowded through. When you say "they," you mean both?—A. Yes, sir.

Q. And when you say they were jostling and rubbing you meant they were jostling and rubbing all the ladies, did you not?—A. I didn't say all of them.

Q. Which of them jostled—the whole of the ladies? You can not say "they" without including them both.—A. I meant that they jostled my wife.

Q. Then you want to change that affidavit that they both jostled your wife?—A. No, sir.

Q. Who did jostle your wife—the one you struck?—A. The one I struck.

Q. Then you don't know whether the other one jostled anybody or not, of your own knowledge?—A. No, sir.

Q. Then when you say they jostled and rubbed, you meant that he; isn't that true?—A. Yes, sir.

Q. Then you were mistaken when you made that affidavit, were you not?—A. Perhaps so.

Q. Did you swear at all at either of them?—A. No, sir; I don't swear.

Q. Did you say "damn?"—A. No, sir.

Q. You are sure about that?—A. I am.

Q. You are sure you didn't say "Damn you, leave here?"—A. I am.

Q. Didn't say "Damn you, leave here," or "I will blow your brains out?"—A. No, sir; I didn't.

Q. You have a police force in Brownsville, havn't you?—A. Yes, sir.

Q. Pretty good force?—A. I don't know, sir; they are Mexicans.

Q. You have a town government there, havn't you?—A. Yes, sir.

Q. Is it general or customary down there for everybody to go armed with a six-shooter?—A. There is a good many officers there.

Q. Officers are allowed freely to go around the street with a six-shooter?—A. Yes, sir.

Q. What is that for—for protection?—A. I don't know, sir.

Q. You don't know what you are armed with a six-shooter for?—A. Yes, sir; I know what I was armed with a six-shooter for.

Q. What for?—A. For protection.

Q. You didn't report this to any of the civil authorities?—A. No, sir.

Q. At any time?—A. No, sir.

Q. Did you ever call it to the attention of Major Penrose, the com manding officer?—A. No, sir.

Q. Took the law into your own hands, didn't you?—A. You mean in regard to striking the man?

Q. Yes.—A. Yes, sir; yes, sir.

Q. And threatening to shoot him?—A. No, sir; I didn't say I would shoot him.

Q. What did you say?—A. I told him I would learn him better.

Q. But you managed to cover him with your pistol so as to enforce that remark?—A. Yes, sir; I covered him with the pistol.

Q. You wanted to make sure that he understood it?—A. Yes, sir.

Q. Do you consider that a threat down in your section, to hold a loaded revolver on a man when you were talking to him?—A. It may be.

Q. Wouldn't you so regard it if one was held on you?—A. Yes, sir.

Q. Isn't it common sense to call that a threat?—A. Yes, sir.

Q. You have got a good deal of prejudice against the negroes, haven't you, Mr. Tate?—A. No, sir; I haven't.

Q. Where did you grow up?—A. I grew up 90 miles east of here in Fayette County.

Q. Isn't there a good deal of prejudice against the negro in Texas?—A. I couldn't say; I couldn't answer that question. I was born and raised with them; I never worked any other labor in my life.

Q. But you don't associate with them?—A. How do you mean?

Q. On equality?—A. No, sir.

Q. You have got that much prejudice?—A. Yes, sir; if you call that prejudice.

Q. You had rather associate with a white man, hadn't you?—A. Yes, sir.

Q. And there are a good many things that you don't allow the negro that you would allow a white man?—A. I don't know what you mean?

Q. I mean socially. You don't consider them socially equal?—A. No, sir.

Q. You think they ought to step off the sidewalk when you meet them?—A. No, sir.

Q. You would be willing to give them half of it?—A. Yes, sir.

Q. Would you give him half?—A. Yes, sir; but I do think they ought to step off and not run over my wife.

Q. Tell us why you didn't report that to the police or to the commanding officer of the post?—A. Why I didn't report the trouble I had with the soldier?

Q. Yes. It was serious enough for you to hit him on the head; why didn't you report it?—A. I thought the report would be the other way. If he wanted redress he would make a complaint against me, and I was subject to a fine the same as any other man.

Q. Is that the way you usually do under such circumstances?—A. I never had such circumstances before in my life.

QUESTIONS BY THE COURT.

Q. Did any of the other ladies besides your wife say they were jostled or rudely pushed while the two soldiers were passing through them that night?

Counsel for the accused:

We object to that; it is not proper examination. Those are the only people that can testify to it, and it could not have been said in the presence of this accused, and we object to it.

The court:

The question is withdrawn.

(The witness was then excused.)

The court then took a recess until 3.55 p. m., at which hour the members of the court, the judge-advocate, the accused, his counsel, and the reporter resumed their seats.

YGNACIO GARZA, a witness for the prosecution, being duly sworn, testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please give your name, residence, and occupation.—A. Ygnacio Garza, Brownsville, Tex.; clerk.

Q. How long have you lived in Brownsville, Mr. Garza?—A. Thirteen years.

Q. Where is your house located in Brownsville?—A. Fourteenth street, between Elizabeth and Washington streets.

Q. Can you point it out on the map up there?

(Witness points out his residence on map as being house directly across the alley from a house known as the Cowen house.)

Q. Where were you upon the night of August 13, 1906?—A. I was at my house.

Q. Did anything unusual occur upon this night?—A. Yes, sir.

Q. Please state to the court all that you heard or saw that night.—A. I heard some shooting about 12 o'clock; I was sleeping at the time, but I was awakened by the shots.

Q. From what direction was these shots apparently fired?—A. From the post.

Q. You could locate them by the sound, could you?—A. Yes, sir.

Q. Were all these shots that you heard that night fired from the post?—A. The first shots were fired from the post. The first shots I heard were fired from the post and afterwards there were more shooting and it looks as if it come from the same direction.

Q. Did this shooting appear to come closer or go farther away?—A. I heard the shots very near my house there, and the shooting advanced to the town.

Q. Any shooting near your house that night?—A. Yes, sir.

Q. How close to your house?—A. Right by my house, by the alley.

Q. There was shooting in the alley by your house?—A. Yes, sir.

Q. Any shooting into your house?—A. Yes, sir; one shot went—one bullet went into my house.

Q. What part of the house did this bullet enter?—A. By the alley into the dining room.

Q. What makes you sure that your house was hit by a bullet that night? Did you find any evidence of it the following morning?—A. Yes, sir.

Q. What, please?—A. I saw where the bullet come in; it struck the library chair and went into the cupboard.

Q. Then what became of that bullet?—A. Well, the bullet went into pieces; I picked the pieces myself from the floor.

Q. What did you do with those pieces?—A. Well, I kept some of them and handed them to Major Blocksom, and the other my little boys took hold of them and scattered them around and I never gathered them.

Q. Have you any of these pieces in your possession at this moment?—A. No, sir.

Q. Describe the appearance of these pieces of bullet?—A. Well, it was some small pieces, looks to me like lead or metal; I couldn't tell you exactly the kind of metal.

Q. All these pieces of metal the same?—A. No, sir; two different kinds.

Q. What was the other kind that wasn't like lead?—A. Looked like brass to me, or steel—something hard.

Q. Did you hear anything in the alley that night beside the sound of guns—that is, beside the sound of the discharge of guns?—A. No, sir; I never heard any talking at all.

Q. Did you hear anything besides talking?—A. Yes, sir; after the shooting I heard somebody run through the alley toward the post.

Q. This was after all the shooting was over?—A. Yes, sir.

Q. How long after?—A. Maybe it was about two minutes; I couldn't tell you exactly.

Q. You say these people were running?—A. Yes, sir; running from north to south.

Q. Running from the town in the direction of the post?—A. Yes, sir; through the alley by my house.

Q. How many times was your house hit that night?—A. Twice.

Q. Could you say what became of the other bullet?—A. No, sir; the other bullet struck right in the foundation of the house—brick foundation—and didn't go in at all.

Q. How far is your house from the garrison wall?—A. It is about 200 feet.

Q. Tell the court, if you can, how long it was from the time the first shot was fired until the shooting occurred opposite your house?—A. It was about five minutes; I couldn't tell you exactly the time, but it was about five minutes.

Q. In other words, there was shooting in the direction of the post about five minutes before it occurred opposite your house?—A. Yes, sir.

Q. Did you hear any bugle call upon this night?—A. Yes, sir.

Q. Can you tell the court about what time this occurred, with reference to the shooting?—A. The bugle call?

Q. I didn't mean what time by the clock, but at what stage of the shooting?—A. They commenced shooting—they shot about—I didn't count the shots—there were about 10 or 15, and they stopped shooting for maybe one or two minutes and they started again shooting, and then I heard the bugle call after they started the second time.

Q. Did the shooting continue after the bugle call?—A. Yes, sir.

Q. For how long a time?—A. May be about eight or ten minutes; I couldn't tell you exactly the time.

Q. Now, where did the sound of this shooting go after it left your house?—A. It went the direction of the Miller Hotel.

Q. Did it seem to recede into the distance?—A. Yes, sir.

Q. Or did it stay right at the Miller Hotel?—A. No, sir; it seemed that it advanced.

Q. Did you leave your house that night?—A. No, sir.

Q. Did you look out the window?—A. I looked out the window in the yard after they stopped shooting the first time.

Q. Could you see anybody?—A. I didn't see nobody, but I heard a big noise toward the garrison.

Q. Describe this big noise you heard toward the garrison.—A. I heard people talking; I couldn't hear what they were talking about because they were far away, but it seemed to me they were walking around the gallery there, around the barracks.

Q. In whose employ were you on the night of August 13?—A. F. Yturria's.

Q. What is Mr. Yturria's business?—A. He is a merchant.

Q. Did you ever have occasion to visit his house?—A. Yes, sir.

Q. Did you visit it upon the morning of August 14?—A. Yes, sir.

Q. Describe, if you know, anything unusual about its condition.—A. Yes, sir; I was notified by Teofilo Martinez, the man that was taking care of the house in Mr. Yturria's absence, and he told me there was some shots fired into the house the night of August 13.

Associate counsel for the accused:

I object to the testimony on the ground that it is hearsay.

The judge-advocate:

I have no reply to make. To save time I will caution the witness to confine himself to what he knows and not what people told him.

Q. Did you notice any injuries to the house upon that morning of the 14th of August?—A. Yes, sir.

Q. Describe them as nearly as you can.—A. I saw some holes into the kitchen and the dining room—I think three of them—three holes made, I supposed, by bullets.

Q. In whose presence did you examine these holes?—A. In the presence of Teofilo Martinez.

Q. Who was he?—A. He was a man employed by Mr. Yturria; he was a servant there at the house.

Q. On that day?—A. Yes, sir.

Q. Were these injuries in the house there prior to the night of August 13?—A. No, sir; I never seen them before and I used to go there every day.

Q. And they were not there on your last previous visit?—A. No, sir.

Q. Did you examine them carefully?—A. Yes, sir.

Q. In what way did you examine them?—A. Well, I examined them—I went up on the railing on the gallery and I saw very plain that those holes were made by shots—it seems to me they were shots fired from the barracks—from the upper gallery; come from that direction.

Q. How many of these what you call evidently bullet holes did you examine for the purpose of ascertaining their alignment?—A. Two of them.

Q. And did they both come from the same point apparently?—A. Not exactly from the same point; one come from one end of the barracks and the other from the other end; they were close together and anybody could see very plain that they were fired from different parts of the barracks.

Q. Did you examine the house to see whether or not anything unusual was embedded in any of the walls?—A. Yes, sir; one picture was hurt by the bullet in the dining room.

Q. Did you find any bullets?—A. Yes, sir; I took one bullet out of the top of a well.

Q. Describe its appearance as nearly as you can.—A. It is a bullet about one and a quarter inches long, less than half an inch thick. I didn't measure it. It was a long bullet.

Q. Evidently made of what material?—A. Evidently made of steel.

Q. How many of these bullets did you find?—A. I saw two of them.

Q. What did you do with the bullets that you found?—A. One of the bullets I took it out. The one I found on the top of the well I took it to the office; the other one I left it where it was.

Q. How long have you lived in your present location—that is, the house you pointed out on the map?—A. I have been living there for four years.

Q. You are fairly familiar with the location about your house?—A. Yes, sir.

Q. Do you recognize what that is? (Hands witness plat.)—A. Yes, sir; this is second barracks from the river. This is Mr. Yturria's place (pointing).

Q. That is Mr. Yturria's place?—A. It looks to me. It is pretty close to this Fifteenth street.

Q. Will you kindly take a pencil and mark as nearly as you can the places on this ground plan where the various bullets hit, if you can, and also the alignment that you noticed at that time?

(Witness marks ground plan as requested.)

To this question counsel for the accused objected as follows:

I think we will have to object to the introduction of this so-called ground plan until it is a little better identified. We would like to have a little better identification of it.

To which the judge-advocate replied:

I will simply state to the court that, following out the instructions of the court given in the early days of this proceeding, I was instructed to have prepared a rough plan, and this is a rough plan; and I think, if I am not mistaken, it was made by simply tracing the Yturria house by the map. I didn't do it myself, but I will give the name of the person who did it, if it is necessary. It isn't intended to be accurate, but is only a matter of representation.

Counsel for the accused:

We don't doubt the accuracy of the thing, but we would like to have it properly identified. His explanation has added materially to our knowledge of it and how it was prepared, but I think we will still have to object, for this reason, that it don't show enough to test whether the witness' knowledge is correct of what he is talking about. If you will have the witness go to the board and show the court, so there will be no mistake about it, we won't interpose any objection.

The court:

Mr. Judge-Advocate, do you still consider it material?

The judge-advocate:

No, sir; it is just a graphic description that we want.

Counsel for the accused:

Our objection is this, if the court will understand, that we want to get this record straight. When he introduces a witness and attempts to make a plan, I want the record to show that that plan was properly introduced, and it has not been so, and we will know what he is talking about. That is our objection; it is like leading a witness in the examination.

The judge-advocate:

Will the witness kindly take that sketch, go to the map, and take a good black pencil and trace the flight of those bullets on the large map upon the wall?

(Witness goes to map on wall and traces lines, as directed.)

The court:

Did I understand you to say that this large map is not a part of the record?

The judge-advocate:

No, sir; I don't think I made any such statement.

Counsel for the accused:

We haven't the slightest objection to anything here that will clarify the record; all in the world that we want is to get it so the reviewing authority will understand it as well as yourselves. I want to say now that we don't have any objection to a photograph, if taken, of it.

CROSS-EXAMINATION.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Counsel for the accused:

We will have to ask a few minutes indulgence of the court so as to prepare for the cross-examination.

The court then took a recess until 4.30 p. m., at which hour the members of the court, the judge-advocate, the accused, his counsel, and the reporter resumed their seats.

Q. What was your occupation, exactly?—A. Clerk.

Q. What kind of a clerk?—A. Well, I am a clerk—general clerk; I act as the teller and correspondent, and anything around the office—office work.

Q. Cashier?—A. Assistant cashier or teller.

Q. In a bank?—A. Yes, sir. Yturria is a merchant and does some banking business.

Q. How long have you been working for him?—A. Eighteen years.

Q. Where?—A. Brownsville and Matamoros. I was working at Matamoros five years and I have been in Brownsville about thirteen years.

Q. Citizen of the United States?—A. No, sir; I am a Mexican citizen.

Q. Not entitled to vote?—A. No, sir; and I have never voted.

Q. How long have you lived at this place that you speak of?—A. About four or five years; I don't remember exactly.

Q. What was it you say waked you up?—A. Shots.

Q. How many?—A. There were about 10 or 15.

[illegible] —A. [illegible] in bed about two

[illegible]

[illegible] —A. [illegible]: I looked at the clock

[illegible]—A. Yes, sir.

[illegible] a quarter after 12.

[illegible] watch down there?—A. I have

[illegible] your clock—American time or

[illegible] standard time.

[illegible] 12.15?—A. It was 12.15.

[illegible] then?—A. Before that.

[illegible]?—A. I never lit any lamp; when I lit

[illegible] after 12.

[illegible] lamp—how did you see your clock?—A.

[illegible] was a quarter after twelve, but that was

[illegible].

[illegible] the shots were fired?—A. Maybe it was about

[illegible]: I don't know exactly.

[illegible] after the shots were fired?—A. Yes, sir.

Q. How long before the men ran back?—A. It was just about that [illegible] eight or ten minutes.

Q. Before the men ran back?—A. Yes, sir.

Q. So that there was an interval of time, then, of eight or ten minutes between the time the firing ceased and when you heard these three or four men run back?—A. Yes, sir.

Q. Did you have a light in your house when they ran back?—A. No, sir.

Q. You lighted the light and put it right out again?—A. Yes, sir.

Q. What did you do when you first heard these shots?—A. I got up and took my children and lay them on the floor; so I did with my wife.

Q. You laid your wife on the floor then?—A. Yes, sir.

Q. What did you do then? What did you do then for protection?—A. I just stayed there with them.

Q. Stayed there in the middle of the floor with them?—A. Yes, sir.

Q. You didn't lie down on the floor yourself?—A. Yes, sir; I did.

Q. How long did you lie there?—A. For about ten or fifteen minutes.

Q. Then what did you do?—A. I got up from there and went to bed; that is all.

Q. [illegible] you heard, how long was it before you lay [illegible] lay down after the first shots, [illegible] again, then I lay down.

Q. [illegible] down.—A. No, sir.

Q. [illegible] and children down?—A. [illegible]

Q. [illegible] Didn't you take your wife and [illegible] after the first shots you heard?—A. No, sir.

Q. How [illegible] you make them lie down?—A. About five [illegible]

Q. [illegible] minutes

Q. Had there been no shooting in the meantime?—A. No, sir.

Q. There was no shooting, then, after the first shots that waked you up, for four or five minutes?—A. Maybe less than that; maybe three or four minutes.

Q. How much shooting occurred then?—A. After the first shots?

Q. Yes.—A. When they commenced shooting again, I must have heard from 150 to 200 shots.

Q. At what stage of the proceeding of the firing of these 150 or 200 shots did you hike around and lay your family down on the floor?—A. Right there at my house.

Q. How long after that first commenced—these 150 shots—that you lay your family on the floor?—A. Maybe twelve or fifteen minutes.

Q. You left them up twelve or fifteen minutes after this firing?—A. Yes, sir; I keep them there.

Q. How long did they lie on the floor?—A. About twenty minutes.

Q. And this firing kept up all that time?—A. No, sir.

Q. How long did the firing last from the time you first heard these 8 or 10 shots until after they had finished these 150 shots or more?—A. About fifteen minutes.

Q. Then your family could not have been lying on the floor during the shooting at all?—A. They were lying there when they started to shooting the second time.

Q. Then after the first two or three minutes when they commenced to shooting the second time you took and lay your family on the floor?—A. Yes, sir.

Q. What did you do at that same time?—A. I lay there myself.

Q. You immediately flattened out on the floor yourself?—A. Yes, sir.

Q. How long did you stay there?—A. About twenty minutes.

Q. Didn't get up at all?—A. No, sir.

Q. Was that during all that long shooting of 150 shots or more you and your family were flattened out on the floor?—A. Yes, sir.

Q. You didn't see much during that time, did you?—A. I didn't see anything at all—nothing but heard shots.

Q. How long after this twenty minutes when you were lying on the floor was it until you heard these men running back?—A. I heard them after they got through shooting.

Q. Was it during this twenty minutes or after this twenty minutes?—A. During this twenty minutes when I heard men running up the alley.

Q. What direction were they running?—A. They were running in the direction of the post—to the post.

Q. What direction is that?—A. From north to south.

Q. Did you testify before Mr. Purdy?—A. No, sir; I testified before Major Blocksom.

Q. Did you read over your evidence after you had given it?—A. I did.

Q. And signed it?—A. Yes, sir.

Q. And you knew it was right, did you?—A. Well, everything I testified was there and I signed it. I never signed it before I read it.

Q. Now, you say these men were running south?—A. Yes, sir.

Q. You are sure about that?—A. I am sure about that.

Q. Then when you said: "Q. Did you hear anybody returning via the alley shortly after the shooting around your house?—A. I heard

Q. How long had you been in bed?—A. Been in bed about two hours.

Q. Went to bed when?—A. About 10 o'clock.

Q. So this was about 12 o'clock?—A. Yes, sir.

Q. Did you look at a watch?—A. Yes, sir; I looked at the clock after the shots.

Q. After the shooting was all over?—A. Yes, sir.

Q. What time was it?—A. It was about a quarter after 12.

Q. What time do you carry on your watch down there?—A. I have no watch; I just have my clock.

Q. What time did you keep by your clock—American time or Mexican time?—A. American time—standard time.

Q. And when it was over it was 12.15?—A. It was 12.15.

Q. Had these men ran back then?—A. Before that.

Q. Before the men ran back?—A. I never lit any lamp; when I lit the lamp it was about 15 minutes after 12.

Q. You say you lighted no lamp—how did you see your clock?—A. When I lighted my lamp it was a quarter after twelve, but that was long after the shots were fired.

Q. How long after the shots were fired?—A. Maybe it was about ten or twelve minutes; I don't know exactly.

Q. Ten or twelve minutes after the shots were fired?—A. Yes, sir.

Q. How long before the men ran back?—A. It was just about that time; about eight or ten minutes.

Q. Before the men ran back?—A. Yes, sir.

Q. So that there was an interval of time, then, of eight or ten minutes between the time the firing ceased and when you heard these three or four men run back?—A. Yes, sir.

Q. Did you have a light in your house when they ran back?—A. No, sir.

Q. You lighted the light and put it right out again?—A. Yes, sir.

Q. What did you do when you first heard these shots?—A. I got up and took my children and lay them on the floor; so I did with my wife.

Q. You laid your wife on the floor then?—A. Yes, sir.

Q. What did you do then? What did you do then for protection?—A. I just stayed there with them.

Q. Stayed there in the middle of the floor with them?—A. Yes, sir.

Q. You didn't lie down on the floor yourself?—A. Yes, sir; I did.

Q. How long did you lie there?—A. For about ten or fifteen minutes.

Q. Then what did you do?—A. I got up from there and went to bed; that is all, and went to sleep.

Q. With respect to the first shots you heard, how long was it before you lay down on the floor?—A. I never lay down after the first shots; when they commenced shooting again, then I lay down.

Q. The first shots didn't make you lie down?—A. No, sir.

Q. But they made you lay your wife and children down?—A. When they commenced shooting again.

Q. The first shots I am talking about. Didn't you take your wife and children and lay them down after the first shots you heard?—A. No, sir.

Q. How long after the first shots did you make them lie down?—A. About five minutes; I could't tell you exactly.

Q. Give us an idea.—A. About four or five minutes.

Q. Had there been no shooting in the meantime?—A. No, sir.

Q. There was no shooting, then, after the first shots that waked you up, for four or five minutes?—A. Maybe less than that; maybe three or four minutes.

Q. How much shooting occurred then?—A. After the first shots?

Q. Yes.—A. When they commenced shooting again, I must have heard from 150 to 200 shots.

Q. At what stage of the proceeding of the firing of these 150 or 200 shots did you hike around and lay your family down on the floor?—A. Right there at my house.

Q. How long after that first commenced—these 150 shots—that you lay your family on the floor?—A. Maybe twelve or fifteen minutes.

Q. You left them up twelve or fifteen minutes after this firing?—A. Yes, sir; I keep them there.

Q. How long did they lie on the floor?—A. About twenty minutes.

Q. And this firing kept up all that time?—A. No, sir.

Q. How long did the firing last from the time you first heard these 8 or 10 shots until after they had finished these 150 shots or more?—A. About fifteen minutes.

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Q. What did you do at that same time?—A. I lay there myself.

Q. You immediately flattened out on the floor yourself?—A. Yes, sir.

Q. How long did you stay there?—A. About twenty minutes.

Q. Didn't get up at all?—A. No, sir.

Q. Was that during all that long shooting of 150 shots or more you and your family were flattened out on the floor?—A. Yes, sir.

Q. You didn't see much during that time, did you?—A. I didn't see anything at all—nothing but heard shots.

Q. How long after this twenty minutes when you were lying on the floor was it until you heard these men running back?—A. I heard them after they got through shooting.

Q. Was it during this twenty minutes or after this twenty minutes?—A. During this twenty minutes when I heard men running up the alley.

Q. What direction were they running?—A. They were running in the direction of the post—to the post.

Q. What direction is that?—A. From north to south.

Q. Did you testify before Mr. Purdy?—A. No, sir; I testified before Major Blocksom.

Q. Did you read over your evidence after you had given it?—A. I did.

Q. And signed it?—A. Yes, sir.

Q. And you knew it was right, did you?—A. Well, everything I testified was there and I signed it. I never signed it before I read it.

Q. Now, you say these men were running south?—A. Yes, sir.

Q. You are sure about that?—A. I am sure about that.

Q. Then when you said: "Q. Did you hear anybody returning via the alley shortly after the shooting around your house?—A. I heard

about three or four persons running back east just after the shooting had all stopped." Which is right, the first sworn evidence or this?—A. Well, I could be mistaken.

Q. You are liable to be mistaken when you swear to things with that deliberation, are you?—A. Maybe so, anybody is liable to make a mistake.

Q. Even under oath, eh? Now then, where were these 150 shots fired?—A. They were fired from the post—about two or three blocks from the post.

Q. They were all fired about two or three blocks from the post?—A. I guess so; I don't know; that is what I think.

Q. When did you commence to guess at it?—A. That night.

Q. Commenced to guess at it that night, did you?—A. Yes, sir.

Q. Have you changed that practice of guessing at it, or are you sure of it now?—A. Well, I am about sure of it.

Q. You are about sure of it now?—A. Yes, sir.

Q. Are you equally sure about these first 8 or 10 shots being fired in the garrison?—A. Well, I think so. I couldn't tell exactly that those shots were fired at the post, but I heard the shooting in that direction.

Q. What direction?—A. Direction of the post.

Q. By the compass? You seem to understand the compass.—A. I don't understand that.

Q. What direction by the compass? You know what a compass is, don't you?—A. Oh, yes, sir. From the south.

Q. It was from the south? Well, toward what house did it come—from what house did it come?—A. From which barracks?

Q. I want to know what house these first shots came from, as you understood it.—A. I think they came from the post.

Q. Could you go and show the court on that map over there where you thought they came from?

(Witness goes to map.)

Q. You understand that map, do you?—A. Yes, sir.

Q. Now, where did those first shots come from?—A. I believe they were about from there (indicating B Company barracks).

Q. Then there was an interval of time before some other shots were fired?—A. Yes, sir; maybe three or four minutes.

Q. Then where were the next shots fired, as near as you could locate them?—A. I suppose they started from nearly that direction—that place there.

Q. They still fired from that same place where you pointed to there?—A. Yes, sir.

Q. Do you see that big "B" there?—A. Yes, sir.

Q. Did those come from that vicinity?—A. Yes, sir.

Q. How long did they seem to shoot from that vicinity after they commenced the second time?—A. The firing, it seemed to me, was advancing.

Q. How long did it take it to get to your house?—A. I couldn't tell you exactly.

Q. Give us your best judgment.—A. It might have been one or two minutes.

Q. One or two minutes to get to your house. You didn't hear anything except the shooting?—A. No, sir.

Q. How long did it stay at your house?—A. Maybe one or two minutes in the alley.

Q. Where did it go to from there?—A. They go all through the alley.

Q. All through the alley, eh?—A. It seems to me that there were several shots.

Q. Where were the next shots fired that you could locate after they left your house?—A. There were shots in the neighborhood of the Miller Hotel.

Q. Did you locate them that night as being at the Miller Hotel?—A. I didn't locate it that night.

Q. When did you locate it?—A. The next day.

Q. After you had heard about it?—A. And I saw the walls.

Q. After you saw the walls next day you inferred those shots were located there?—A. Ever since that night I thought they were coming from the direction of the post.

Q. You didn't make up your mind that they were coming from the Miller Hotel when you were lying flat on the floor?—A. No, sir.

Q. Did you make up your mind about it being at the Miller Hotel that night or the next day when you saw the shots?—A. I thought they were firing that direction.

Q. You thought so that night, did you?—A. I heard the shooting that way.

Q. Where else did you hear any other shooting that night? Locate any that you can locate.—A. I heard the shooting toward the town, and that night I couldn't tell where the shooting was at.

Q. You testified that it was down between certain streets there; did you locate it there that night?—A. No, sir; the next day.

Q. You didn't locate it until the next day?—A. I saw the effects of the bullets.

Q. And then the next day, because you saw the effects of the bullets there, you come here before this court and swear you located it there that night?—A. I heard the shooting up in the town that night. I wasn't sure where they were firing from.

Q. Did you tell this court, under questions by the judge-advocate, that you located that shooting up between two certain streets there you mentioned, at the Miller Hotel, and then two other streets? Did you know it that night when you were lying flattened out on the floor, or did you know it the next day?—A. I suppose that night when I was lying flat on the floor I thought they were firing in that direction.

Q. Might it have been two or three blocks farther down, so far as you knew that night?—A. Maybe so; I don't know.

Q. How many rooms in your house?—A. Seven rooms.

Q. Is it a single story or double story?—A. What do you mean by that?

Q. Is there an upstairs and downstairs?—A. Single story.

Q. Can you make a little plan showing where these rooms are, so we will understand it?—A. Yes, sir.

Q. Just make a plan there showing the house, the streets, and the rooms in the house.

At 4.55 p. m. the court adjourned to meet at 10 o'clock a. m. the following day, Wednesday, February 20, 1907.

CHAS. E. HAY, JR.,
Captain and Judge-Advocate, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., February 20, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocate. The accused, his counsels, the reporter were also present.

The reading of the proceedings of February 19 was dispensed with.

YGNACIO GARZA was reminded he was still under oath.

CROSS-EXAMINATION CONTINUED.

Q. You remember that last night or yesterday afternoon you were asked if you could prepare a plan of your house and you said you could and you would prepare a neater one this morning; have you done so?—A. This is the best I can do. (Hands plan to counsel.)

By counsel for accused:

Before going ahead with the examination I would like the court to see generally what this is, so perhaps you will understand a little better what is meant by the several questions. It is a ground plan showing the rooms in his single-story house, numbered from 1 to 7, consecutively.

(This plan was handed to the court, examined by them, and there being no objection, was offered in evidence and is hereto appended and marked ——.)

Q. Now, your house faces on what street?—A. On Fourteenth street.

Q. Is it directly on the street or does it set back a trifle from the street?—A. It is directly on the street.

Q. Sets on the sidewalk?—A. Yes, sir.

Q. How about the alley—does it set directly on the alley also?—A. Yes, sir.

Q. There is no fence there?—A. There is a fence in the yard, but not around the house. The house is on the alley.

Q. The house forms one border of the alley—that is, no fence between the house and the alley?—A. No, sir.

Q. Where were you—what room, No. 1, 2, 3, 4, 5—when the firing commenced?—A. In room No. 4.

Q. How many doors are there to this house facing on Fourteenth street? Where are they?—A. Two doors.

Q. And what do they enter into?—A. Into No. 2 and No. 3.

Q. So that there is a front door entering into Nos. 2 and 3?—A. Yes, sir.

Q. There is no outside exit in either No. 1 or No. 4?—A. No, sir; except in the yard. There is one door in the yard—in the corridor—that communicates with the house.

Q. Do Nos. 1, 2, 3, and 4 communicate?—A. Yes, sir.

Q. Tell where the rest of your family was when the firing commenced.—A. In bedroom No. 3.

Q. All of them in No. 3?—A. Yes, sir.

Q. And you had how many in there?—A. Three children and my wife.

Q. All in bedroom No. 3?—A. Yes, sir.

Q. How high is the fence that connects your house on the alley with the back part of the lot? What kind of a fence is it?—A. Lumber fence, about 4½ feet high.

Q. Is it a picket fence or solid board fence?—A. Solid board fence.

Q. Is there a fence on the Cowen side of the alley?—A. Yes, sir; some kind of a fence.

Q. How high is that—the same height as yours?—A. About the same.

Q. Just the same, or is it higher or lower?—A. About the same; I can't tell exactly.

Q. What kind of a foundation has your house got?—A. Brick foundation.

Q. And how high is this foundation above the surface of the ground?—A. About 14 or 16 inches.

Q. And then the top of that house is frame?—A. Frame house.

Q. How thick is it?—A. It is ceiled, you know—about 2 inches thick.

Q. The house itself is about 2 inches thick?—A. Yes, sir. I mean the wall and the ceiling makes it 2 inches.

Q. Well, show us how thick the wall is, from the inside to the outside—show the court.—A. This is the wall and this the ceiling; call this the space between the ceiling and the wall; maybe about 4 inches.

Q. Then there is—between the outside weatherboarding and the inside ceiling, is that plaster or is it——A. Ceiling—lumber, pine lumber.

Q. And the weatherboarding is how thick?—A. About an inch; maybe less than an inch.

Q. And the inside ceiling, how thick is that?—A. About the same; maybe an inch, seven-eighths, or three-fourths.

Q. Are the joists 2 by 4?—A. I don't know; I have seen only outside and the inside; I don't know.

Q. How long did it take you to get your wife and family into No. 1?—A. I never took them to No. 1.

Q. Where did you take them?—A. Into No. 4.

Q. And is that where you laid down yourself?—A. Yes, sir.

Q. Where are the windows in No. 4, if any?—A. The windows in No. 4?

Q. Yes.—A. One window fronting the street and two windows fronting the yard on the east side of the house.

Q. You mean by the east side of the house the side toward Washington street?—A. Yes, sir.

Q. Are there any windows or doors on the side toward No. 7, room No. 7, which is just back of it, from Thirteenth street?—A. There is one door between 3 and 4 and one door between 3 and 7.

Q. I am talking about between 4 and 7; is there any communication between 4 and 7?—A. Yes, sir; a window.

Q. Any windows in No. 7?—A. Yes, sir; one fronting the yard; the south side of the house.

Q. That's toward Fifteenth street?—A. Yes, sir.

Q. There's none on the Washington side?—A. No, sir.

Q. Did you go into No. 2 at all?—A. No, sir.

Q. Didn't go into No. 2?—A. No, sir.

Q. I mean after the firing commenced, you didn't go into No. 2?—A. No, sir.

Q. Stayed in No. 4 all the time after the firing commenced?—A. Three and 4.

Q. Are there any windows between Nos. 3 and 6?—A. Yes, sir; one window.

Q. And where is that?—A. It's just in the center of the——

Q. Window connecting Nos. 3 and 6?—A. Yes, sir.

Q. What kind of walls have you inclosing Nos. 5, 6, and 7?—A. Well, it is a partition, a double wall, just the same as the house, ceiled.

Q. And the partition walls between these are how constructed—the partition walls separating 1, 2, 3, 4, 5, 6, and 7?—A. Simple partitions.

Q. That is, it is ceiling and not plaster?—A. Ceiling; no plaster.

Q. As I understand it, 1 is the dining room?—A. Yes, sir.

Q. Two the parlor?—A. Yes, sir.

Q. No. 3 the bedroom?—A. Yes, sir.

Q. No. 4 also a bedroom?—A. Yes, sir.

Q. And Nos. 3 and 4 are the only two bedrooms you have in the house?—A. Yes, sir.

Q. No. 5 used for several purposes?—A. Yes, sir.

Q. Kitchen—what is it? Ever use that for a kitchen?—A. No, sir.

Q. No. 6 is the comida?—A. Corridor or gallery.

Q. And No. 7 is for several purposes?—A. Yes, sir.

Q. Did you use neither of those for bedroom purposes?—A. No, sir.

Q. How long after this firing had ceased was it when you got up off the floor in No. 4?—A. Maybe it was about five or between five and ten minutes; I don't remember exactly the time.

Q. So five or ten minutes after the firing had all stopped you got up?—A. Yes, sir; I got up.

Q. How long was that after you heard this big noise in the dining room?—A. About ten minutes—from ten to fifteen minutes.

Q. From ten to fifteen minutes after you heard this big noise is when you got up your courage and got up off the floor and went into the dining room, was it?—A. I didn't go into the dining room that night.

Q. When did you go into the dining room—next morning?—A. Next morning.

Q. What did you do when you got up off the floor, about ten or fifteen minutes after the firing was over?—A. About ten, or maybe less than that; I could not tell exactly.

Q. What did you do when you got up?—A. I went to bed.

Q. And you didn't go out at all that night?—A. I didn't go out at all that night.

Q. You examined, then, these bullets and the bullet holes next morning, eh?—A. Yes, sir.

Q. Now, did you examine both of them with great particularity? You said there were two struck your house.—A. Yes, sir; well, just examined them the best I could.

Q. Did you locate where the shots came from?—A. The one in the dining room?

Q. Did you locate where they came from?—A. Locate?

Q. Where they were fired from.—A. Yes; I locate the one in the dining room came from—it struck the west side of my house, on the corner of the house.

Q. Tell the court which side and where.—A. In the alley side; dining room.

Q. And whereabouts—on which—you said just around the corner?—A. Yes, sir; right about the corner.

Q. How far from the corner?—A. From the corner of the house?

Q. Yes.—A. I think about 6 inches.

Q. Struck it about 6 inches from the corner?—A. Yes.

Q. Then where did it go to?—A. Inside.

Q. Went through both the outside and the inside?—A. Yes, sir.

Q. And where did it strike next?—A. It went through the house, the wall, and the ceiling, and strike the leg of a chair and went into the cupboard.

Q. Where was this chair?—A. It was standing between the cupboard and the wall.

Q. Just show us whereabouts in the dining room it struck and where the chair was and where the cupboard was.

(Witness indicated this on Exhibit ——.)

Q. Where was the man standing evidently when he fired that?—A. Must have been standing on Fourteenth street, or maybe on the corner of the Cowen house.

Q. Go up and show the court where he must have been standing. You understand a plat?—A. Standing about here, or maybe on the street here; here is my house, the bullet strike about here in the alley, the man that fired the shot must be about the corner here, or somewhere.

Q. Somewhere down in Fourteenth street?—A. Yes, sir.

Q. Might he have been down Fourteenth street quite a ways?—A. I don't know. That's the best I can tell you about it.

Q. What's your best judgment about it?—A. Well, the best judgment, maybe that the man was standing in the corner, right here on this corner. (Indicates Cowen's corner.)

Q. I would like you to indicate the direction of that on through. You were pretty skillful about indicating that yesterday. Indicate the whole distance, where it struck the chair, and the sideboard.

(Witness does so.)

Q. You think that man could have stood down Fourteenth street in front of the Cowen house, do you?—A. Maybe so; yes, sir.

Q. Tell the court if I understand you correctly, that the chair was near, very close to the front of the house on Fourteenth street. The chair this bullet struck.—A. Yes, sir.

Q. This cupboard was in the corner toward Washington street, was it not?—A. Yes, sir; but it was——

Q. Farthest away from the Cowen alley?—A. Yes, sir; it was in the same room; the dining room.

Q. Did you indicate it as being across the corner?—A. Yes, sir; across.

Q. One of those corner cupboards, was it?—A. Yes—not exactly.

Q. What was it, if it was not exactly?—A. I could not make a good explanation of that; it was a cupboard—a cupboard.

Q. Did it set right into the corner?—A. No, sir; the corner was there; the cupboard was this way (indicating with a book).

Q. That's diagonally across?—A. Yes, sir.

Q. It went through the wall, outside and inside covering, and then struck the chair; what kind of chair was this?—A. A wooden chair.

Q. What kind?—A. About like this (indicating a barrack chair).

Q. Where did it strike it?—A. About here (indicating on leg of chair).

Q. Didn't strike any iron in it?—A. No, sir.

Q. Did it go through just one leg of the chair?—A. Only one leg.

Q. About the same size as that?—A. Yes, sir; about the same size.

Q. And then it went where?—A. Into the cupboard.

Q. Did you take it out of the cupboard?—A. The bullet went to pieces.

Q. Where did you pick up those pieces?—A. I pick it from the floor.

Q. Whereabouts?—A. Right by the cupboard.

Q. You didn't see where this had struck any iron or other metal in the house, this bullet?—A. It seems to me, I don't remember exactly, it seems to me it struck some nails in the cupboard.

Q. How many did it strike?—A. I don't remember.

Q. How big a nail?—A. Maybe 3-penny.

Q. Did you see any evidences of the nail being around anywhere?—A. I saw the nail.

Q. Might you have confused that with these other pieces of steel you spoke of yesterday that you picked up?—A. I don't know.

Q. I think you said yesterday that you picked up some brass parts to this bullet, didn't you?—A. It seemed to me parts; I don't know exactly the material it is composed of.

Q. Then the steel you saw was this 3-penny nail, was it?—A. No, sir; no nails at all on the floor.

Q. What became of this nail this bullet struck and mashed to pieces on?—A. It is still in the cupboard.

Q. You mean to tell the court that that 3-penny nail is what mashed that bullet all to pieces?—A. It seems to me that way.

Q. How many of those pieces did you find?—A. Several; I don't remember how many.

Q. Well, your best recollection?—A. Maybe 6, or 7, or 8; I don't know.

Q. There was not less than 6?—A. Was not less than 6.

Q. How big were they? Show the court; give the court an idea.—A. Some were about one-half inch long, some of them one-fourth of an inch—different sizes.

Q. Those that were one-half an inch long, how wide were they?—A. Maybe one-eighth of an inch, or something like that; I didn't measure them.

Q. Could you indicate it on a piece of paper?—A. Yes, sir.

Q. Indicate several of them as near as you can recall the size of them, so the court can examine them.

(Witness draws on piece of paper sizes of the several pieces.)

Q. Were there any more than you have indicated? You said 6 or 8, and you have only indicated 5.—A. Some others. I could not swear that was just exactly the figures.

Q. How big was this hole that was made in the cupboard?—A. Less than half an inch.

Q. Will you indicate that for us—your recollection of it? Was it as big as a nickel (showing witness a nickel)?—A. No, sir; when it entered in the cupboard it can be seen very well, where it entered, just strike the door.

Q. How about that; was it as big as that (showing witness a dime)?—A. No, sir.

Q. Very near as big as that?—A. Well, I could not told you exactly; I don't remember exactly how it is.

Q. Was it bigger or as big as that pencil?—A. Maybe so.

Q. Your best recollection?—A. About. Maybe more than that.

Q. Is it about the same size where it came into the house?—A. Yes, sir.

Q. Now, what kind of a hole did it make in that chair leg?—A. Well, it just broke a piece or part of the leg.

Q. Didn't go through it?—A. Yes; go through it and broke one piece off; about one-half inch.

Q. How much wood did it go through in this cupboard?—A. Went through maybe about an inch.

Q. Wasn't more than that?—A. I don't remember exactly; I only examined it once.

Q. That's your best recollection now?—A. That's my best recollection.

Q. Now, where did that other shot strike?—A. The other shot strike right in front of No. 2 room, the parlor, in the foundation.

Q. Show Captain Murphy there whereabouts. I don't see very well.

(Witness indicates on plat.)

Q. Where was that fired from?—A. It was fired from Fourteenth street, right about Mrs. Leahy's.

Q. From about Mrs. Leahy's on Fourteenth street?—A. In the alley opposite my house.

Q. Show the court there.—A. About here. (Indicates on map Mrs. Leahy's hotel and the alley.)

Q. You think it was right about the corner?—A. Yes, sir.

Q. Run the pointer up and show the court where it struck the house.

(Indicates a line running from the alley and Fifteenth street to about the middle of the house.)

Q. What damage did it do to the brick?—A. It damaged the brick maybe about an inch and a half.

Q. What do you mean? I don't understand you.—A. It struck and mashed the brick.

Q. How big a strike did it make? Show the court what kind of a hole.—A. About this long. (Indicates with hands about 6 inches.)

Q. Just plowed into it about that long?—A. Yes, sir.

Q. How wide was this hole it made in the brick?—A. The hole is about one-half inch or an inch.

Q. Was it that same width all the length of it?—A. Yes, sir; I think so.

Q. So that it made a hole running straight along like that, about the same?—A. Yes, sir; extending about this way (indicating with hands).

Q. About what length of the brick did it pass along? A brick is 9 inches, isn't it?—A. It struck right in the middle of the brick.

Q. And did it run the whole length of the brick?—A. I think so; along the brick. It strike right about the middle. I don't remember exactly.

Q. What I want to get at—did it make this furrow about 5 or 6 inches long, or how long?—A. This is the brick, for instance. It struck it here and make just a little round hole; mashed all the brick.

Q. Mashed all the brick?—A. Yes, sir; it seems that way.

Q. Then it didn't make a groove along it, as you first stated?—A. I don't know; I could not tell you that; I don't know.

Q. You say you don't know and can't tell me. Is that what you mean to say?—A. Yes; it just strike the brick.

Q. If it mashed the brick all to pieces how did you know it was a shot at all?—A. It seemed to me it was a shot. I could not swear it was a shot. I think it was a shot.

Q. But you did swear to it yesterday.—A. I suppose it was a shot, because that was not there the day before.

Q. You are sure about that?—A. Yes, sir; I am sure about that.

Q. What time did you examine it the day before?—A. The day before I was going into my house and never noticed anything about it.

Q. But did you examine it especially the day before?—A. No, sir.

Q. It might have been there without your seeing it?—A. Yes, sir.

Q. So you don't know?—A. I don't know; I noticed it the next day.

Q. Speaking of that reminds me. You said you knew there were no bullet holes in Mr. Yturria's house on the day before this—on the 13th of August?—A. I never noticed any.

Q. Did you examine that house the day before?—A. I went into the house; I did not examine it thoroughly. I did not notice any holes.

Q. Did you go around that house and examine to see if there was any holes there?—A. No; not especially.

Q. As a matter of fact, there might have been holes the day before and you not see them?—A. I never saw them.

Q. Then your knowledge of that is based on what Teofilo said to you?—A. Yes, sir.

Q. You didn't see any shots?—A. I saw what he told me.

Q. What he told you were shots?—A. Yes, sir.

Q. And your knowledge was based on what he said?—A. Of course, he was the servant at the house and came to the office and reported to me.

Q. Isn't he the same servant that ran into the brick house at the rear as soon as the firing commenced?—A. Yes, sir.

Q. Well, now, you said you saw three holes, "made, I suppose, by bullets." Where were they?—A. At Mr. Yturria's house.

Q. Where were they in Mr. Yturria's house?—A. In the kitchen and dining room.

Q. How many in the kitchen?—A. I think about two.

Q. Were there about two?—A. And one in the dining room.

Q. Were there one or two or three? How many? I want positive evidence. A. Two; I don't remember exactly.

Q. How many in the dining room?—A. I suppose one; between the dining room and the kitchen I saw three holes.

Q. And how many went into windows and how many into doors and how many into other places? Tell us about it.—A. I think one in the kitchen, that went through the cornice of the gallery; went through the door and went through the wall, the kitchen door, and the other side of the house, and that's the one that went in the top of the well, the one we took out.

Q. You are sure about that?—A. I am sure; yes.

Q. How do you know?—A. I saw the direction—I know the direction.

Q. How do you know the direction?—A. You can see it—the best I could.

Q. How did you go about seeing that the best you could?—A. Just stood there and examined it.

Q. Show us how you did it.—A. I went through the house there.

Q. Just walked through the house, and you determined that was the same one?—A. I think so; I suppose so.

Q. Where did you see another one? Wait a minute, let's go back to this one again. How much did that go through—what kind of material did it go through?—A. Pine lumber.

Q. How much lumber and where was it?—A. The cornice is kind of a casing about 2 inches thick; the wall is about 1 inch thick, and the door is about 1⅜ thick.

Q. It went through, then?—A. The top of the well.

Q. About 3 inches thick. How much lumber did it go through at the top of the well?—A. It just stopped there in the top of the well.

Q. What kind of holes were these?—A. It make a kind—something like a line this way, and struck a nail, 8-penny nail, and stayed right there.

Q. How did you know it was an 8-penny nail?—A. Because I know the nails—I can see the difference.

Q. When it ran up against this 8-penny nail it stopped, did it?—A. It stopped right there.

Q. How much wood did it go through before hitting that 8-penny nail?—A. It just make a line——

Q. How much wood did it go through?—A. I don't remember exactly; can't tell exactly.

Q. Your best recollection?—A. Maybe an inch or 2 inches; I don't know, I could not tell exactly.

Q. Did it bury itself 2 inches deep in this well?—A. No, sir.

Q. How deep was it in the well?—A. About one-half or three-fourths of an inch.

Q. Did you take out this 8-penny nail?—A. No, sir; I took out the bullet.

Q. Didn't touch the 8-penny nail?—A. No, sir.

Q. It's there yet, is it?—A. It's there yet.

Q. And you are certain it only went through about 2 inches of wood before it struck there?—A. It went through the cornice, the wall, and the door.

Q. How much was the cornice?—A. About 2 inches.

Q. And what else?—A. One inch of wall.

Q. And what else?—A. About 1⅜ inches of door.

Q. That's 4⅜ inches; and what else?—A. And where it struck in the well about three-fourths of an inch.

Q. Who examined this with you?—A. Teofilo.

Q. Anybody else?—A. No, sir.

Q. Never examined it with anyone else?—A. That same one bullet? No, sir; I examined it only the first day.

Q. Tell us where the other bullets struck.—A. About in the same direction, but went into the dining room.

Q. Where in the dining room did it strike?—A. About on the side of the kitchen.

Q. Which way is the kitchen of the Yturria house, with respect to your house?—A. Shall I show you on the map?

Q. Yes; show us on the map.—A. (Witness indicates on map.) The lower part is the kitchen.

Q. Right on the yard?—A. Yes, sir.

Q. There is nothing between it and the yard toward the alley?—A. No, sir; nothing but a fence.

Q. The kitchen and the dining room take all the space of that L part there?—A. Yes, sir.

Q. How far from the southwest corner of the kitchen was it that that struck? The second one.—A. About here, and went through here.

Q. About how far from the corner? If you can't tell it in feet, show the court.—A. From the corner of the kitchen?

Q. Yes; the southwest corner. How far from that was it that that bullet struck?—A. It may be about 2 or 3 feet, 3 or 4 maybe; I don't remember exactly.

Q. Show us. Give us an idea.

(Witness indicates about 4 feet, a little less.)

Q. What did that one strike—the second one I am talking about now—what did it strike first?—A. The cornice, too, and went into the wall and into the partition and struck a picture and got stuck in the door.

Q. How much lumber did that go through?—A. Went through about 2 inches in the cornice; 1 inch of wall; 1 inch of partition.

Q. That's 4.—A. And the picture—just a common picture.

Q. Bury itself into the picture?—A. Yes, sir; just went through from one side to the other; broke the glass.

Q. Did it go through the wood back of the glass?—A. I think there is no wood; I think it is paper or cardboard.

Q. Where did that bullet lodge? Where did it stop?—A. In the dining-room door.

Q. Went from the picture to the dining-room door?—A. Yes, sir.

Q. Did it go through anything else in order to get to the dining-room door?—A. No, sir.

Q. The picture was hanging in front of the dining-room door, was it?—A. Hanging opposite the door.

Q. The picture was hanging on the wall, where it first struck the outside wall, was it?—A. Yes, sir; right in front, about there.

Q. How far above the floor was this shot? This is first or second story?—A. In the first story in the house.

Q. How far above the floor, then?—A. From the ground?

Q. From the floor, not from the ground.—A. Must be about 6 or 7 feet.

Q. And where did it enter the dining-room door?—A. It's about 3 or 3½ feet.

Q. Three and one-half feet from the——A. From the floor of the dining room.

Q. And this door of the dining room communicates with the kitchen?—A. No, sir; communicates with the yard.

Q. The door that it buried itself then in, this particular shot—the door that that was buried in was not the communicating door between the kitchen and the dining room?—A. No, sir.

Q. But that particular shot only went through the outside wall of the house and that picture, that's all?—A. That's all; and the partition.

Q. What partition?—A. Between the kitchen and the dining room.

Q. How many inches of wood is that?—A. About an inch, I guess.

Q. And where is this dining-room door? Which side of the house does it open onto?—A. That door is open on the north side of the house. (Witness indicates on the map.)

Q. Tell the court where that picture was; what wall was it hanging against?—A. About here.

Q. On the partition wall, then, between the dining room and the kitchen?—A. Yes, sir.

Q. Which way does it face, toward the dining room or the kitchen?—A. Toward the kitchen.

Q. Was it in the dining room or in the kitchen?—A. In the dining room is the picture.

Q. How high above the floor was that picture?—A. About 6 or 6½ feet.

Q. Show us about how high.—A. About this high. (Witness indicates about 6 feet.)

Q. Was it higher or lower than where the bullet came into the house?—A. A little higher.

Q. That's two of those you have described. Where is the other bullet? Where did that strike?—A. I did not examine that.

Q. Now, the other bullet—the third bullet—you are positive about three. Tell us where that struck?—A. I did not examine it; I didn't go through it at all; I saw the hole there.

Q. Where was that hole?—A. Right in the wall; I don't remember whether in front of the dining room—between the dining room and the kitchen somewhere. I saw the hole; I didn't go through it.

Q. You don't know where that was fired from?—A. I didn't examine it.

Q. Did you find the bullet from that?—A. No, sir.

Q. Do you know what ever became of that bullet?—A. I don't know.

Q. What bullets do you know about?—A. The one I took out of the top of the well, and I saw the one that was at the door.

Q. Who took that out?—A. I understand it was taken out by Major Blocksom; I never saw him.

Q. You never saw him?—A. I never see him taking it out.

Q. You never saw that shot at all?—A. I saw the bullet; I saw the bullet there.

Q. It was after Major Blocksom had taken it out?—A. I don't remember, I say.

Q. You marked with great accuracy yesterday the line of certain bullets, two of them. How did you determine that line; did you do it alone?—A. I do it once alone, and the second time I do it Major Blocksom and myself.

Q. You did that in company with Major Blocksom?—A. Yes.

Q. Was Teofilo there at the time?—A. No, sir.

Q. Did you sight along the line of that that first time you examined it, when you were alone?—A. Yes, sir; I did.

Q. Where did you place yourself to sight along it?—A. I went up on the railing in the gallery.

Q. Where is the gallery, what side of the house?—A. In the kitchen; right in the kitchen.

Q. In the kitchen?—A. Yes; outside of the kitchen.

Q. And you sighted which way?—A. I sighted toward the post.

Q. What did you look through?—A. I just took the direction of the hole.

Q. As it passed through what?—A. It passed through some trees around the street there.

Q. There was some trees?—A. They are there.

Q. First, I want to get that well fixed. What side of the house was that well on? Show us there.—A. About here. (Witness indicates on map.)

Q. How high off the ground was that well?—A. About 3 feet.

Q. That well was about 3 feet from the ground?—A. Yes.

Q. And the bullet was how high up on it?—A. On the top of the well.

Q. So it was about 3 feet from the ground, eh?—A. Yes, sir.

Q. If I understand you correctly, you were standing back of the railing of the gallery of the upstairs, passing along the kitchen and the dining room. You were up on the upstairs railing back of the kitchen?—A. I was up on the railing; yes; right on the railing.

Q. Is there an upstairs and downstairs gallery to the kitchen and dining room of Mr. Yturria's house?—A. Some two or three steps only, from the ground; about three steps.

Q. How many stories to that part of the house, the kitchen and dining room of Mr. Yturria's house?—A. Only one story; single story.

Q. Then the railing you referred to was the railing along the porch or gallery on the garrison side of the Yturria house. Is that true?—A. Yes, sir.

Q. How high is that railing from the porch? How high up off the porch does it come? Show the court, from the floor there.—A. This is the railing and this the cornice. About 6 feet.

(At this point member of the court said he did not think witness understood question, to which counsel replied: "No; I do not think so either. My attention was attracted elsewhere for a moment.")

Q. Do you recognize this picture (handing witness Exhibit [ ])?—A. Yes, sir.

Q. What is it?—A. Mr. Yturria's place.

Q. Looking from where?—A. From the post.

Q. What's that you see in the background, the tank, etc.?—A. This is the kitchen and the dining room.

Q. What's that great big tank?—A. A windmill and tank.

Q. Is that the well you were talking about?—A. No, sir; this is a water tank.

Q. Any bullet holes in any of that that you found?—A. Yes; I saw some of them.

Q. In that framework of the tank?—A. On the tower of the windmill.

Q. Did you sight from those too?—A. No; I didn't look at that.

Q. You didn't know which way they came from?—A. No, sir.

Q. When did you think to tell about that? Did you ever mention that before?—A. I never mentioned it, no; I just looked at them.

Q. Who showed them to you?—A. I saw them, and Teofilo too.

Q. When did you see them?—A. Next morning, 14th of August, 1906.

Q. You didn't tell Major Blocksom about it?—A. He was looking at it too; he didn't examine, I suppose.

Q. Did he? Do you know whether he did or not?—A. I don't remember.

Q. Whereabouts did those strike?—A. About here.

Q. Way up high?—A. Yes.

Q. Which side did they come from, which direction?—A. The direction of the barracks, the post.

Q. Show us just where it struck there.

(Witness here indicates the west corner, the post running up from the west, that is to say looking from the post would be the farthest to the left.)

Q. Now, that's the only one you saw strike that framework of the well there?—A. No; the one I saw strike the——

Q. No, no; is that the only one you saw strike that windmill, or the framework of the windmill?—A. Yes, sir; I saw only one.

Q. How high above the house was that?—A. About the same direction.

Q. How high above the house? You indicated it was above the house; I want to know whether it was or not, where the bullet struck.—A. I don't know exactly how far.

Q. Do you know whether any more shots went into that or not?—A. I don't know.

Q. But you are certain you found one there?—A. Yes, sir; I saw the sign of one there.

Q. The sign of one shot or more?—A. I saw only one sign.

Q. Did that go through that piece you indicated there?—A. Just on one side of the——

Q. How much lumber did it go through?—A. Maybe about one-fourth of an inch.

Q. How far is that trestle work there of the windmill from the kitchen?—A. From the kitchen? I think it is about 18 or 20 feet.

Q. Now, then, you said you stood back of the gallery there, that means on the porch, when you were sighting this shot?—A. Yes, sir.

Q. Did you look through the hole to see where it came from?—A. I saw——

Q. Did you or did you not look through the hole to see where it came from?—A. Yes; I looked on one side of the bullet hole.

Q. Did you look through any of those bullet holes—through them?—A. No, sir.

Q. You did not?—A. No, sir; I did not.

Q. At the time you were there alone you did not look through them to determine where it came from?—A. I just looked on one side of them, the closer I could do it.

Q. Tell us what you mean by that.—A. I went up on the railing and I took the best line of it.

Q. If I understand you correctly, Mr. Garza, you were standing on the porch, and you were between this bullet hole where it struck the house or the coping and the garrison, were you not?—A. Yes; I was looking toward the post.

Q. Then you put your eye on the line of where the bullet hole struck and looked at the post?—A. Yes, sir.

Q. And from that you determined that bullet was fired from the post?—A. From the barracks.

Q. Is that the way you determined the direction of all those shots?—A. The two I examined; yes.

Q. And from that method of looking at the direction you determined the directions you put on the map here yesterday?—A. That's about correct. I could not tell you exactly if they are correct, but it is about the best I can do.

Q. Now, did you make any examination subsequently with Major Blocksom?—A. I made the same examination that I did myself.

Q. And in the same way?—A. In the same way.

Q. Did you tell Major Blocksom what the direction was?—A. I never told him; he saw them himself and I did myself.

Q. Did he tell you?—A. He—well, I don't remember.

Q. What's your best recollection? Did Major Blocksom tell you the direction they came from?—A. I suppose so; I don't remember exactly.

Q. What's your best recollection? We want to know.—A. Yes; I suppose.

Q. Is that the reason, really, you are so sure about their coming from the post?—A. That's the best I knowed it.

Q. You testified before Mr. Purdy, didn't you?—A. No, sir; I did not.

Q. Testified before Major Blocksom, didn't you?—A. Yes, sir.

Q. Signed it and swore to it?—A. Yes, sir.

Q. Before Mr. Kowalski?—A. Mr. Kowalski, district clerk.

Q. Read it before you signed it, and swore to it?—A. Yes, sir.

Q. And that was the first day of this last January, wasn't it?—A. Yes, sir.

Q. You commenced the year making that affidavit?—A. Yes, sir.

Q. Were you asked this question: "State if anything unusual occurred that night and what you saw and heard.—A. At 12 o'clock p. m. I heard some shooting toward the garrison. I got up from my bed and went to the back window and heard some noise toward the garrison. When I went to the window the shooting had stopped and then started again after I got to the window. I called my wife and three children and put them on the floor, because I could hear bullets." Was it because you first heard bullets that you grabbed your wife and children?—A. Yes, sir.

Q. Where were the bullets going?—A. Coming from the post.

Q. Sure about that?—A. About that direction.

Q. Why didn't you tell Major Blocksom so?—A. He may not ask me.

Q. Why didn't you tell us so yesterday?—A. I answered all the questions.

Q. You heard 8 or 10 shots and you were in room No. 4?—A. No. 4.

Q. Was it while you were still in room No. 4 that you determined those shots came from the garrison, or where were you when you made up your mind to that?—A. I was in room No. 4.

Q. How many bullets did you hear?—A. I heard about from 150 to 200.

Q. You heard all those while you were lying on the floor, wasn't it?—A. Yes, sir.

Q. You didn't hear where any of those first 10 shots went, did you?—A. Sometimes you can.

Q. Did you hear where any of those 10 bullets you spoke of—did you hear any of them?—A. I heard the bullets—the shots.

Q. I am talking about the first 10 shots you heard.—A. I heard the first 10 shots.

Q. Did you hear the bullets from those?—A. I don't remember whether I do or not.

Q. Then you might have been mistaken when you swore you heard them, to Major Blocksom, weren't you?—A. I don't remember.

Q. Don't remember whether you were mistaken or not?—A. No, sir.

At this point the president of the court stated as follows:

The question is asked whether the document from which counsel reads questions and answers has been introduced in evidence before the court.

To which counsel for accused replied:

May it please the court, it is a matter of general knowledge, it is a matter of official information what this is, and the witness swears that he did swear to this before. It is as nearly properly identified as any evidence can be, and we certainly have nothing to conceal from that, and when the proper time comes we propose to take proper action in regard to it, and I wish to say here that we claim the right, as long as that question is introduced now—I suppose for the purpose of questioning our right to do it—that we claim the right to go into everything this man has sworn to before, and every other witness brought up here, and to compare his sworn evidence here with every other sworn evidence in every other investigation. That's our purpose.

By the president of the court:

The only question is whether it has been introduced before the court.

By the counsel:

This is the document from which the pictures have been introduced with no question or objection on our part, and we have always been willing and anxious that the witness himself should see what is written down, and you notice we always ask with great particularity whether he read it over and signed it and swore to it.

By the president of the court:

While there is this interruption I will say that, knowing the nationality of the witness, if there is no objection I would like to ask if he understands what is meant by bullets, and if he means bullets or shots.

By the counsel:

I have no objection to that; glad to have you do it. I am simply trying to have the court measure up this witness. The point we make, and the court may as well understand it now as any other time—there have a lot of witnesses been introduced here, and their evidence has been taken two or three times,

and we want to show whether the interests of both sides were safeguarded by the only method known to American jurisprudence, or common law either, the test of cross-examination. If it won't stand that test, you can't convict anybody on it; if it will stand it, we will have to stand by it. I want to be understood that neither in this witness or any other do we want to take advantage of any technicality, and if there is any question in the mind of the court any time that the witness is not understanding, we hope you will interrupt, because we don't expect to find anything in any such manner, only on the merits.

By the president of the court:

I understand, but I thought it should be cleared up now.

Q. Do you understand the distinction—what is meant—between bullets and shots?—A. Yes, sir.

Q. You understand that. (He says distinctly in his evidence he heard some shooting; then in that part I read to him he said he heard some bullets. The witness repeated "I heard about 10 shots." He spoke of it in this examination as shooting, and then separated it, you recall, as bullets.)

Q. Then, I understand you say you don't know whether you heard any of those first 10 bullets or not?—A. No, sir.

Q. When did you first hear bullets?—A. When they were shooting right in front of my house.

Q. That's the first bullets you heard?—A. That's the first bullets I heard strike.

Q. Did you hear any bullets whizzing over you, or anything of that sort?—A. I could hear that, too.

Q. When did you hear that?—A. At night; the same night.

Q. What time?—A. About 12 o'clock.

Q. What stage of the proceedings; in the first 10 shots?—A. No, sir; after they started again the second time.

Q. Did you hear any bullets before they got to your house—when they were shooting at your house?—A. I heard shots.

Q. You didn't hear any bullets?—A. No, sir.

Q. Where were they when you first heard the bullets?—A. They were right in front of the dining room of my house in the alley, I suppose so, because I could hear also the magazines.

Q. You were in No. 4 at that time?—A. Yes, sir.

Q. Were the doors all open?—A. Yes, sir.

Q. Wide open, front doors and all?—A. No; not front doors; the doors inside what separates, connecting one room and another.

Q. Windows wide open?—A. The sash of the window in the dining room were open and the blinds were closed.

Q. When you put your wife and children and flattened yourself out on the floor of No. 4 you didn't take the trouble to close the doors at all?—A. No; the door connecting 3 and 4 was open and remained open.

Q. Let's fix that time you swore to Major Blocksom and Mr. Purdy you could hear bullets. I want to know when you heard them. Where were the men shooting when you heard those bullets?—A. They were right in front of my house in the alley.

Q. You didn't mean to say you heard shots, you heard bullets?—A. I heard the shots and I could heard that they strike.

Q. You heard how many strike?—A. I don't know; I don't remember.

Q. You heard the shots strike?—A. Yes, sir; the bullets strike.

Q. Did you hear any besides the one you heard strike in your room?—A. Yes; I heard more.

Q. How many?—A. I didn't count them.

Q. What did they sound like they were hitting?—A. Sound like they were hitting a piece of lumber.

Q. Did you think it was your house?—A. I never thought so.

Q. Where did you think it was striking?—A. Right in front of my house.

Q. You thought it was striking lumber right in front of your house?—A. Yes, sir.

Q. What lumber is in front of your house?—A. Pine lumber.

Q. What is it in?—A. A house.

Q. You thought they were striking a house across Fourteenth street from you?—A. Across the alley.

Q. You thought they were striking the Cowen house?—A. Yes, sir.

Q. You didn't tell anybody so?—A. No; well—I didn't say to anybody so.

Q. Did you tell the grand jury so?—A. No, sir.

Q. Did you tell Major Blocksom so?—A. No; I didn't tell him they were striking the Cowen house, but I told him I could hear.

Q. Tell this court what you did mean when you said, "I could hear the bullets."—A. I could hear the bullets—it means I could hear where they strike, and the shot and the whistling.

Q. You could hear the bullets whistling?—A. Yes; I heard some.

Q. Could you imitate that noise?—A. Yes. (Witness makes a whizzing noise.)

Q. Where was that?—A. When they were shooting in the alley.

Q. And you were flattened out on the floor at that time in room No. 4?—A. Yes, sir.

Q. Were all those shots just the same?—A. Looks to me the same.

Q. You mean by that they sounded the same?—A. They sounded the same.

Q. You didn't hear any shots that sounded different from that you have just described?—A. No, sir; I did not.

Q. Have you ever heard any bullets go over you like that before?—A. No, sir.

Q. Let's find out when that bugle call sounded. How long after these first ten shots that wakened you up?—A. Maybe one or two minutes—about two minutes.

Q. Was it during the interval when there was no shooting?—A. No, sir; the bugle call—they gave the bugle call after they commenced shooting again the second time.

Q. Immediately afterwards?—A. Just about immediately.

Q. Was the bugle call going before the shooting was right out in front of your house?—A. Yes, sir.

Q. You are sure about that?—A. Yes, sir.

Q. How many bugle calls did you hear?—A. Several; I didn't count them.

Q. But they all seemed to be at the same place, or different parts of the garrison?—A. I can't tell you anything about that; I don't remember.

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Q. When did you hear that?—A. At night; the same night.

Q. What time?—A. About 12 o'clock.

Q. What stage of the proceedings; in the first 10 shots?—A. No, sir; after they started again the second time.

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Q. Could you imitate that noise?—A. Yes. (Witness makes a whizzing noise.)

Q. Where was that?—A. When they were shooting in the alley.

Q. And you were flattened out on the floor at that time in room No. 4?—A. Yes, sir.

Q. Were all those shots just the same?—A. Looks to me the same.

Q. You mean by that they sounded the same?—A. They sounded the same.

Q. You didn't hear any shots that sounded different from that you have just described?—A. No, sir; I did not.

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Q. Immediately afterwards?—A. Just about immediately.

Q. Was the bugle call going before the shooting was right out in front of your house?—A. Yes, sir.

Q. You are sure about that?—A. Yes, sir.

Q. How many bugle calls did you hear?—A. Several; I didn't count them.

Q. But they all seemed to be at the same place, or different parts of the garrison?—A. I can't tell you anything about that; I don't remember.

Q. Did you hear any movements in the garrison at all?—A. After the first shooting—the first, about ten shots—I went out in the window and I heard a big noise toward the garrison, sir.

Q. You said on cross-examination yesterday that you didn't go to that window during the shooting at all; that you flattened yourself out on the floor with your family.—A. I was flat on the floor there after they started shooting the second time.

Q. That is it, eh?—A. Yes, sir; that's it.

Q. What did you see when you went to the window?—A. I saw nothing, but heard a noise.

Q. What was this noise?—A. Looks to me like somebody was walking around the galleries of the barracks.

Q. Bugle call sound then?—A. No, sir.

Q. How long after this thing was it until you heard the next shot?—A. Maybe one or two minutes, or two or three minutes; I don't remember exactly.

Q. You didn't hear any shots, about three together, almost immediately after these 10 shots, did you?—A. No; I don't remember.

Q. You testified before Mr. Purdy and Major Blocksom as follows: "Q. Did you hear any bugle call?—A. Yes; inside the garrison—one or two minutes after they commenced shooting."—A. The second time.

Q. You also testified that you heard three or four men, persons running back east after the shooting had all stopped; you didn't see anybody that night?—A. I didn't see nobody.

Q. And when you heard those men shooting, where were you?—A. Lying on the floor.

Q. In room No. 4?—A. In room No. 4.

Q. Are you positive they were running down the alley?—A. Yes, sir.

Q. Sure about that?—A. That's the best of my knowledge.

The judge-advocate then addressed the court as follows:

For information of counsel would state I have a new interpreter, named Aurelio N. Flores, of San Antonio.

(The judge-advocate asked interpreter if he had ever lived in Brownsville, to which Mr. Flores replied in the negative.)

Aurelio N. Flores was then duly sworn as interpreter.

Mr. N. A. ALANIS, a witness for the prosecution, was duly sworn and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please state your name, residence, and occupation.—A. Nicolas Angelus Alanis; jeweler; Brownsville.

Q. Do you know Major Penrose?—A. No, sir.

Q. Where were you living on August 13, 1906?—A. In Brownsville.

Q. Where were you about midnight upon this night?—A. In the saloon of Mr. Tillman.

Q. In what part of Mr. Tillman's saloon?—A. In the garden.

Q. Is this garden in the rear of the saloon or in front of it?—A. In the back.

Q. Did anything unusual occur about this time? If so, describe fully to the court what you saw and what you heard.—A. Yes. I heard several shots about 12 o'clock, about midnight, more or less. A few moments after the shooting had begun I saw the saloon keeper fall dead—that is to say, the clerk.

Q. Tell in what general direction you first heard firing.—A. In the direction of the post.

Q. How far away did the first firing seem to be?—A. To me it seemed about two blocks, more or less; something like that.

Q. Did the firing remain stationary or did it appear to approach nearer?—A. It was peace, and after a while they shot again.

Q. How close did the firing seem to come to you?—A. About from here to the door, more or less. (Distance of about 15 feet.)

Q. Where were you when the firing was at the closest point?—A. I was in a place inside the garden, close to the toilet.

Q. Were you in plain view or were you hidden?—A. I was hidden.

Q. Why did you hide?—A. Because I heard voices.

Q. What was there about these voices that caused you to be afraid?—A. I first heard that they were shooting on the streets.

Q. (Question repeated.)

A. I imagined that it could be for the ones that were shooting.

Q. You spoke of seeing a clerk fall dead.—A. Yes.

Q. What was the name of this clerk?—A. Frank Natus.

Q. Do you know what caused him to fall dead?—A. A shot that struck his body.

Q. Did you see who fired this shot?—A. I did not.

Q. Did you see from what direction it was fired?—A. I never saw the direction it came from, but could calculate from what direction it came.

Q. What was he doing just prior to the time he fell dead?—A. He was coming in the direction of the door in the alley to close it.

Q. Did he say anything to you or did you say anything to him about this time?—A. I told him to return, because there were some people in the alley.

Q. Did he say anything to you?—A. No.

Q. Did he say anything just prior to the time he dropped?—A. I don't remember him saying anything.

Q. At the time?—A. He said: "Oh, God," and opened his arms and fell.

Q. Were you in a position to see Natus distinctly?—A. Yes, sir.

Q. What did you do after Natus was shot?—A. Advised the police.

Q. You spoke of hearing voices in the alley; describe them.—A. I could not describe them, because they were murmuring.

Q. Were they speaking in English or in Spanish?—A. I could not know.

Q. About how many shots were fired at the moment or about the moment Natus fell to the ground?—A. From four to six; something about.

Q. Were there any bullet holes about the premises of Tillman's saloon after the shooting?—A. Yes, sir.

Q. Did you hear any movements in the garrison at all?—A. After the first shooting—the first, about ten shots—I went out in the window and I heard a big noise toward the garrison, sir.

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Q. Did he say anything just prior to the time he dropped?—A. I don't remember him saying anything.

Q. At the time?—A. He said: "Oh, God," and opened his arms and fell.

Q. Were you in a position to see Natus distinctly?—A. Yes, sir.

Q. What did you do after Natus was shot?—A. Advised the police.

Q. You spoke of hearing voices in the alley; describe them.—A. I could not describe them, because they were murmuring.

Q. Were they speaking in English or in Spanish?—A. I could not know.

Q. About how many shots were fired at the moment or about the moment Natus fell to the ground?—A. From four to six; something about.

Q. Were there any bullet holes about the premises of Tillman's saloon after the shooting?—A. Yes, sir.

Q. Did you examine them that night?—A. Yes, sir; some of them I did.

Q. When did you examine the rest?—A. The following day.

Q. From their alignment, from what direction were they probably fired?—A. From the alley and the street.

Q. About what height above the ground were these shots fired?—A. About 4 feet, I think; more or less.

Q. Is Tillman's saloon sometimes also called the Ruby Saloon?—A. It is named that way; yes, sir.

The court then took a recess until 2 o'clock p. m., at which hour the members of the court, the judge-advocate, the accused, his counsel, and the reporter resumed their seats.

The witness NICOLAS ALANIS, was reminded by the judge-advocate that he was still under oath.

CROSS-EXAMINATION.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. How long have you been in business in Brownsville?—A. Since 1894 to this day.

Q. Are you an American citizen?—A. No, sir.

Q. Where is your place of business?—A. On Twelfth street and Adams—I am not certain whether it is Adams or Madison—between those two.

Q. Can you speak English?—A. A little.

Q. Do you understand English?—A. Very little.

Q. Do you transact any business at all in English?—A. Sometimes.

Q. You are able to make a sale or explain about repairs to an American customer in English?—A. Sometimes; yes, sir.

Q. Do you understand what I have just said?—A. I don't understand.

Q. Tell the court where you were when you went and hid yourself.—A. In the lot of Mr. Tillman's saloon.

Q. That is, in the rear lot?—A. In the garden; yes, sir.

Q. Is this inclosed by a fence or wall?—A. Yes, sir.

Q. Which?—A. By a wall.

Q. How high is it?—A. It is a round house.

(Interpreter repeats question.)

A. More or less about that high (pointing).

Q. What does he mean when he points at that?—A. The height of the wall there.

Q. Is there more than one gate or door to this rear wall?—A. Yes, sir.

Q. How many doors?—A. I don't understand what you said.

Q. Is this wall directly on the alley—the rear wall?—A. Yes, sir; on the alley.

Q. How many doors or gates are there through this wall on the alley?—A. It is a large gate with a small door in the center.

Q. How large is this gate, how tall, and how wide, and how high?—A. I have never measured it; I don't know what size.

Q. Ask him to show the court.—A. About 10 feet high by 6 or 7 feet wide.

Q. How large is this small door in this gate?—A. More or less it is 6 feet by 3 wide.

Q. What did he go over to that place where he went for?—A. I went there with some friends to drink a little beer.

Q. No. What I want to know is what he went in this back lot for?—A. I went to urinate.

Q. Whereabouts is the urinal that he went to in the lot?—A. In a corner of the lot.

Q. Now, tell him to describe which corner of the lot it is located in.—A. About north, on the north side.

Q. Well, is it in the corner next the building or is it in the corner next to the wall on the lot?—A. It is in the same building; it is all one whole building.

Q. Isn't there a lot back of the saloon?—A. It is a small—where there is a garden.

Q. Now, wasn't this urinal in the garden?—A. Inside; yes, sir; in the corner of the lot.

Q. Now, what corner? That is what we want.—A. I can't mention the side, but it is on the corner this way.

Q. Was it over close to the wall that he has described as being on the alley?—A. Yes, sir; it is close to the wall.

Q It is against the wall and not against the store?—A. Against the wall of the alley.

Q. Now, which corner is it in as he goes out of the back door of the saloon—to his right or to his left?—A. On the left.

Q. Now, how far is it from this large gate to the door that leads out of the saloon?—A. About twenty steps, I believe.

Q. Then he was up close to the wall on the street in that corner, was he?—A. Yes.

Q. How long did you remain at the water-closet?—A. I wasn't in the toilet.

Q. How long did you remain at the place where you urinated?—A. About ten or twelve minutes.

Q. Well, were there any stairs close to the place?—A. Yes, sir.

Q. Where did those stairs lead to?—A. Upstairs to the second story.

Q. To the second story of the saloon?—A. Yes, sir; it is upstairs—it is all around.

Q. Do these stairs go up along the wall at the rear that is on the alley?—A. Yes, sir; you go up.

(The reporter read the last question.)

Q. Do these stairs go up along the wall that is on the alley?—A. Yes, sir.

Q. What direction do these stairs go up?—A. On this side—on the left hand as you go out of the hall or saloon.

Q. Ask him how far this stairway is from the wall on the alley.—A. It is very close; about from here to the wall; it is very close.

Q. Do you think from here to the wall indicates about 12 or 15 feet?—A. More or less; I have never measured it.

Q. Now, what I want to know is this: In going up these stairs does he go toward the saloon itself or does he go toward Twelfth

street in going up the stairs?—A. You go in the direction of Twelfth street, but you turn around as you go up.

Q. Now, are these stairs boxed up so that you can not see through them?—A. There is a small portion of it upstairs on the passway.

Q. But the part that goes from the ground toward Twelfth street?—A. About 2 or 3 feet—3 feet.

Q. Now, is that boxed in so that a man getting behind it could not be seen from the front of the stairs?—A. Not from the front of the stairs. If you stoop there, you can see them.

Q. What part of these stairs did he hide behind—the part that takes him up toward Twelfth street or the other part?—A. Which part?

Q. The part that turns toward the saloon?—A. Yes, sir; in the hollow where the stairs go up.

Q. Could any person at the gate see him?—A. Where I was? No.

Q. Where would a man have to be in order to see him where he was?—A. Very close—from here to there.

Q. He would have to be that close before he could see him?—A. Yes, sir.

Q. Why?—A. Because where I was hidden he couldn't see me no way.

Q. What position was he in?—A. I had all my body down on the ground.

Q. Tell him to show the court.—A. More or less?

Q. Exactly, as near as he can recollect.—A. (Witness illustrates.) Supposing that is the wall and that is the stairs, and this turns as it goes up; I was right in the stairs in that hollow part in that position. (Witness indicates that he sat upon one heel with the other foot advanced, in a squatting position.)

Q. Which direction was he facing when he got in that position?—A. Facing Elizabeth street.

Q. Tell him to tell the court, using the exact language that this man Frank Natus used when he was shot.—A. What Frank Natus said?

Q. Yes.—A. He said "Oh, God!"

Q. I want his exact language, not a translation of it.—A. He said "Oh, God!"

Q. He said "Ay, Dios!" didn't he?—A. Yes, sir; an exclamation.

Q. He didn't say "Oh, God!" He said "Ay, Dios!" Ask him that question.—A. He said "Ay, Dios!"

Q. Tell him to tell the court exactly in the same language, the same words, as near as he can recollect, them, that he used to this man Natus—what he said to him, if anything, that night.—A. "Return, Frank; they are shooting from the alley."

Q. I want you to give that in the witness's own language, in Spanish. I want his exact language in Spanish.—A. "De vuelve, Frank; estan tirando del callejon."

Q. How long did you remain in that squatting position?—A. Some ten or twelve minutes.

Q. How long did you remain there after Frank Natus made this exclamation?—A. About two or three minutes.

Q. Did you go up to Frank Natus?—A. No.

Q. Where did you go?—A. I remained there where I was.

Q. No; but when he left there?—A. After awhile, yes, sir; I went to see him.

Q. How long after he made this exclamation before you went to see him?—A. About eight minutes—seven or eight minutes.

Q. Did you speak to him or feel of him at all?—A. No.

Q. Did you actually see any bullet hole in him or not?—A. No; not that moment, I didn't.

Q. When did you see it—how long after that?—A. About half an hour afterwards.

Q. When did you actually, of your own knowledge, know that he was dead?—A. Since the moment I saw him.

Q. How did you know that?—A. Because when he fell he was agonizing until completely he lost his voice; I was looking at him this way.

Q. Did you examine any of the bullet holes that night?—A. I saw some.

Q. Ask him if he testified before Major Blocksom and Mr. Purdy.—A. If they asked me, I think so.

Q. Ask him if he didn't testify before those people and that John J. Kleiber didn't interpret for him.—A. Yes, sir.

Q. Ask him if that testimony was taken down and he afterwards signed it.—A. Yes, sir.

Q. And he swore to it when he signed it?—A. Yes, sir.

Q. Ask him if he remembers this question: "Did you examine the bullet holes in Tillman's saloon there that night?" and you answered "Yes, sir; the next morning."—A. Well, yes, sir; it is true.

Q. You didn't tell him that you examined any that night, did you?—A. If they asked me, I think I did.

Q. Did he say so?—A. It may be; I don't know.

Q. How many shots did he examine the next morning?—A. Several, but I don't remember what amount; there were several.

Q. Can he tell us now how many there were?—A. I don't remember.

(The witness was then excused.)

The court then took a recess until 2.20 o'clock p. m., at which hour the members of the court, the judge-advocate, the accused, his counsel, and the reporter resumed their seats.

Capt. DANA W. KILBURN, Twenty-sixth United States Infantry, a witness for the prosecution, being duly sworn, testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please give your name and your rank and your present station.—A. Dana W. Kilburn, captain and quartermaster, Twenty-sixth Infantry, quartermaster, Fort Sam Houston, Tex.

Q. Captain, are you familiar with the cartridges used in the army service to-day?—A. Yes, sir.

Q. Are you familiar with the cartridges used just prior to the present authorized cartridge?—A. Yes, sir.

Q. What is the cartridge they use to-day in the Army?—A. Springfield.

Q. Is that its full name?—A. That is the only one that I know it by.

Q. What was the cartridge used previous to the present cartridge?—A. It was a modification of the Krag rifle and adapted to our army Krag-Jörgensen.

Q. If you know, please tell the court how the present cartridge is marked?—A. Do you wish to know the difference between the two, or the exact marking?

Q. I would like to know whether you know how the present Springfield cartridge is marked?—A. The Springfield cartridges are furnished by about three different firms, and each firm has its own mark—the Union Metallic, Frankford Arsenal, and Remington.

Q. If you remember, how is each marked?—A. I don't remember exactly how each one is marked, but each one has its markings, referring to where it is made. The Frankford Arsenal has an "F" on it and the Union Metallic generally have "U. M. C.;" the Remington sometimes have a mark and sometimes they do not—just have the date stamped across it.

Q. Are you familiar with the Mannlicher cartridge?—A. I have seen them.

Q. How do they differ, if in anywise, from the present Springfield cartridge?—A. A little bit shorter bullet. The marking is usually on the base of the cartridge—it has some letter. A good many of these are made in this country, and generally when they are shipped out of this country they have a special mark or letter showing they are shipped from this country; that does not always obtain, but usually it does.

Q. Are you familiar with the cartridge used in the Mauser rifle?—A. Yes, sir.

Q. How does that differ, if in anywise, from the Springfield?—A. There is a perceptible difference in the bullet and the size and the marking on the back; it is usually marked with a "D. M." and the date and the year it is made.

Q. How could you tell the Mauser or the Mannlicher from a Springfield cartridge?—A. By the length of the bullet, markings on its base, and I think the caliber of the Mauser is a little bit smaller. That is my impression.

Q. How are these Mannlicher and Mauser cartridges carried?—A. In clips.

Q. And how are the Springfield cartridges carried?—A. In clips.

Q. Are these clips in anywise similar?—A. They are practically the same except the Mannlicher and Mauser are shorter clips.

Q. And these clips for the Springfield rifle, what are they carried in?—A. They are carried in kind of a bandolier.

Q. What is a bandolier?—A. It is a web belt fitted with pockets for carrying two clips each and with straps suspended for holding them on.

Q. Would you recognize a bandolier if you saw one?—A. Yes, sir.

Q. So far as you know, is a bandolier used in any other army besides the United States Army?—A. Not that I know of.

Q. Will you tell me what this is?—A. That is one of the regulation bandoliers issued to the troops in this country.

Q. How do you recognize it as such?—A. By the stampings and

the markings on it, "Frankford Arsenal," and from its shape and the material it is made of.

Q. How long have you been in the service, Captain?—A. Fourteen years—that is, in the commissioned service.

Q. I will hand you several cartridges and bullets; will you kindly take those and tell the court, if you can, what each is and mark each in some manner so it can be identified later?—A. That is the Frankford Arsenal Springfield.

Q. Any special kind of Springfield?—A. It is the one that is used now.

Q. Is that the service bullet or not?—A. That is the bullet that is used at present.

Q. Will you mark that in some way?—A. (Witness marked cartridge "I.") This is another Springfield of Frankford Arsenal, model of 1905; the bullet is a little bit different.

Q. How have you marked that?—A. Marked that with "II." This is the same, only it is the model of 1906; little difference in the jacket of the bullet.

Q. Marked what?—A. Marked "III." This one marked "IIII" is one of the old Krags, model 1901. This is another Frankford Arsenal of 1904; I never saw one like that before; it looks like a reduced charge. It is for a clip. I will mark it "IIIII." That one is one of the Krag-Jörgensen without the clip, single loader, marked "IIIIII."

Q. Identify that, if you can.—A. That is one of the clips used for the Springfield; it is a little bit short for a Springfield clip, though.

Q. How many cartridges does a Springfield clip usually hold?—A. Five.

Q. Will you take five Springfield cartridges, if there are that number in evidence—can you identify this cartridge?—A. That is one of the service cartridges, model 1906.

Q. Now, will you take the five cartridges that you have identified as Springfield cartridges and insert them in the clip?—A. These two are different years; they have got different jackets to their bullets. There are only four of them here, but the fifth will go in. (Witness inserts five cartridges in the clip.)

Q. Will that clip hold five Springfield cartridges such as you have identified?—A. Yes, sir.

CROSS-EXAMINATION.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. Will this same clip hold five Mausers?—A. I never tried it; I think there would be a little over.

Q. Do you know?—A. No; I do not.

Q. You don't know whether it will or not?—A. No; I have never tried it.

Q. Do you know what is the actual difference between the Mauser clip and the clip for the Springfield ammunition?—A. There is a difference in length; I know that.

Q. How much?—A. I couldn't say; a slight amount, though; not over a quarter of an inch; possibly not that.

Q. Have you ever actually compared them together?—A. I never have.

Q. Where did you get that information that they were not much different?—A. I have seen a good many Mauser clips down in Cuba and our own clips here.

Q. But you never actually put them together?—A. I have had some at home laying around there and I have noticed them and I could pick it out as being shorter.

Q. You didn't put five Springfield-rifle cartridges in this clip here? Are they all identified as Springfield cartridges that you put in?—A. I don't remember now whether all of them were identified as such. I put five cartridges into it.

Q. They were not all Springfield cartridges?

The judge-advocate:

The record will bear out the fact that they were all Springfield cartridges.

Counsel for the accused:

I beg your pardon; I have a right to ask him whether he did or not.

A. I don't know whether that one was identified or not.

Counsel for the accused:

That is just the point that I want to make, that he did not identify them all as Springfields. That was my understanding, and I was trying to get it clear.

Q. Do you know what that short cartridge is?—A. No, I do not; I never saw one.

Q. What other cartridges were identified by you aside from the Springfield?—A. The Krag.

Q. You identified two as being the Krag?—A. Yes, sir.

Q. Aside from the Springfield being made for a clip, what is the difference between a Krag and a Springfield?—A. There is a difference in the base; one has a shoulder and the other has a——

Q. I said aside from the fact that one is prepared for use in a clip.—A. The Krag is a trifle longer. They vary from time to time—from year to year.

Q. Now, are there any other distinctions you wish to make that you think of between the Krag and the Springfield?—A. External differences?

Q. Yes; omitting, of course, those that you have mentioned.—A. I don't know of anything especially, unless by an expert taking it and examining it closely. I don't know of any marked difference. Of course by not having that shoulder on it, it makes the base of it smaller.

Q. Which did you say is the longer, the Springfield or the Krag—the cartridge?—A. I said that the Krag, I thought, was a little longer. That was what I stated and that is my impression now, without comparing the two.

Q. The Krag is the longer of the two? How much?—A. Certainly not more than an eighth of an inch; it is very slight.

Q. This bandolier that you describe, how did you identify that; solely by the markings, as you stated?—A. As I recognized them. I have them in my company.

Q. Are they all of this same make that you have identified here?—A. All that I have seen.

Q. You never knew of any to be made with a flap for this part?—A. Do you mean for each pocket?

Q. Yes, sir.—A. Yes, sir; I think the first lot that came out were with flaps sewed down.

Q. Do you know whether these are used by anyone else than the Government?—A. I do not.

Q. Then you identified this as being a Government one solely by the stamp on it?—A. Yes, sir.

Q. You don't know whether the manufacturer that put that stamp on issues them to outsiders?—A. I do not know.

Q. You don't know whether those are subject to purchase by outsiders?—A. I don't know whether they are or not.

Q. All that you know is that similar ones were issued to you?—A. Yes, sir; issued to us.

QUESTIONS BY ASSOCIATE COUNSEL FOR THE ACCUSED.

Q. Are bandoliers to be obtained from any other place than the Frankford Arsenal?—A. I was relieved from duty with the company shortly after those new rifles were received, and I only got the one batch, and since that time I have not had anything to do with target practice or rifles or bandoliers.

Q. From what places does the Government get their ammunition for the Springfield, 1903 model?—A. From the Frankford Arsenal, Union Metallic Company, and some, Remington Company.

Q. Any other places that you know of?—A. Not that I know of.

Q. Did they ever get any from Lowell, Mass.—the United States Cartridge Company?—A. I wouldn't say, because I am not sure.

Q. Any from the Winchester Repeating Arms Company?—A. Yes, sir; the Winchester; that is another place.

Q. Any from Bridgeport, Conn.?—A. I don't know.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. What is the difference between the Mannlicher cartridge and the Mauser?—A. I don't know much about the Mannlicher cartridge. I have seen them; I saw them in 1898, and I haven't seen any since, except over in the islands, and I wouldn't like to state exactly what the difference is.

Q. You know it is a clip kind?—A. Yes, sir.

Q. You haven't kept in touch with their ammunition since 1898?—A. Except over in the Philippines; we used to run across them occasionally; and I saw them in 1903.

Q. As late as 1903 did you see them over there?—A. Along, I would say, about March or April of 1903.

Q. Now, what did you say was the difference between the Mannlicher clip cartridge and the Mauser clip cartridge?—A. I didn't say.

Q. You don't know the difference between them?—A. I didn't say.

Q. So if those two were laid down before you you couldn't tell one from the other?—A. Yes, sir; I could recognize the one, and I would know the other must be the Mannlicher.

Q. And you would recognize the Mannlicher by knowing that it wasn't for the other?

Counsel for the accused:

We will have to formally object to the introduction of these under the identification by this witness; they are not properly identified. We can demonstrate it to the court, but we don't care to do it before the witness.

The judge-advocate:

I will ask for a ruling of the court on this subject.

(The court then excused the witness temporarily and asked counsel if he desired to make any remarks.)

Counsel for the accused:

Yes, sir. Now, we object to it, because the comparison between the Krag and the Springfield is manifestly erroneous, and anyone can look at it and see; and he certainly is not an expert on the difference between a Mannlicher and the others; he has got to adduce that by a process of elimination. We haven't the slightest objection to having these identified by anyone here. You have got here on the court an expert, and we would like to have him identify them and let them come in. We don't care about them coming in; we just want to have them identified properly, and we interpose no objection to an expert identifying them.

The court:

If there is no objection, we would like to have Colonel Baker identify them.

Counsel for the accused:

We would also like to have Colonel Baker identify them, and we have no objection to his doing so.

The judge-advocate:

I am very glad to hear the remarks of counsel. I would like also to have Colonel Baker sworn as a witness for this particular purpose.

The court (to the judge-advocate):

Will you please see that the record is made right?—We haven't acted on your objection, Colonel Gleun.

Counsel for the accused:

I don't care for the court to act on it now.

(The objection was withdrawn.)

Counsel for the accused:

We want them properly identified; that is all.

The judge-advocate:

In view of the remarks of counsel we will withdraw our request for a ruling of the court.

(The previous objection and reply was read by the reporter.)

Counsel for the accused:

I simply wanted to correct a minor error; we don't want to go on record as having tried to have them introduced, but we asked that if the judge-advocate wants them introduced that they be identified by an expert, so the court will know what is being talked about.

Lieut. Col. FRANK BAKER (member of the court), Ordnance Department, U. S. Army, a witness for the prosecution, being duly sworn, testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please state your name, your rank, and your present duty.—A. Frank Baker, lieutenant colonel, Ordnance Department, U. S. Army, chief ordnance officer, Department of Texas, in command of the San Antonio Arsenal.

Q. How long have you been in the Ordnance Department, Colonel?—A. Twenty-eight years.

Q. During this time I suppose you have become more or less familiar with the various classes of cartridges used in the army rifle?—A. At various times.

Q. Are you more or less familiar with the cartridges used by the rifles of other countries?—A. I am not.

Q. You could tell, could you, a cartridge used by the army service rifle of to-day if you saw it?—A. Oh, yes.

Q. And could you tell one that had been used just previous to the present service rifle?—A. I could.

Q. I would like to place before you certain cartridges and have you tell the court what they are, to the best of your knowledge and belief.—A. This cartridge case was manufactured at the Frankford Arsenal in 1904, and was for what is known as the Krag-Jörgensen, caliber .30, model 1903. Something has been done to that; it has been shortened in some way and the bullet appears to bear marks of having been apparently inserted in some rifle having a chamber too short for it. That cartridge is marked "IIIII" on the exterior surface. I don't know how many marks are intended there, but this case is likewise a case manufactured at the Frankford Arsenal in 1905, and was intended for use in the magazine rifle, model 1903, and it is what is known as model 1903 ammunition. There is a mark around the mouth or neck of this case which I do not understand. That bullet is marked "I." This is a cartridge known as model 1903, and is for the magazine rifle, model 1903, and was made at the Frankford Arsenal in January, 1906, and it is marked "IIIIIII." This cartridge, marked "IIII," was made at Frankford Arsenal in 1901, and is what is known as model '98 ammunition, being intended for use in the Krag-Jörgensen rifle. This is a cartridge known as model 1903, and is for use in the magazine rifle, model 1903; it was made at the Frankford Arsenal in January, 1906, and is marked "III." This cartridge marked "II" on the case is a cartridge, model 1903, for use in the United States magazine rifle, caliber .30, model 1903, and was made at the Frankford Arsenal, in October, 1905. There is a crimping on the neck about that that I don't recognize. This cartridge marked "IIIIII" on the case is what is known as ammunition, model 1898, for use in the Krag-Jörgensen rifle, and made at the Frankford Arsenal in September, 1901.

Q. I will introduce these two objects and ask you to identify them.—A. This clip is identical in appearance with the one which is used with the present model of magazine rifle. This is a bandolier, such as ammunition is at present issued in.

CROSS-EXAMINATION.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. Colonel, all that ammunition comes in that form, whether it comes for the Government or otherwise?—A. How is that?

Q. Does all this ammunition for the new Springfield guns come in that form, whether used by the Government or not, or are these

bandoliers used exclusively for the Government?—A. I do not know that.

Q. All this ammunition that you have identified here is ammunition that is used, or has been used, in the Government rifle, either the present new Springfield or the old Krag-Jörgensen?—A. I have no doubt in regard to the ammunition, which is for the present magazine rifle. I haven't any doubt as to the cartridges I have identified as pertaining to the Krag-Jörgensen gun. Ordinarily Frankford's mark is, now, as you see, "F. A." This is marked simply "F," but I firmly believe that is Krag-Jörgensen ammunition.

Q. It is a little shorter than the new ammunition?—A. I am not familiar with the exact dimensions; I simply can tell by comparison only.

Q. Are you familiar with these various other ammunitions I have spoken of?—A. I am not.

Q. So that a cartridge made just like that, for instance, for one of the other guns—for instance, for my Savage—you would not know whether it was this or the Savage?—A. I could only tell by the markings on the base.

Q. That is the only means of identification?—A. That is the only identification I would have except a trial by gauges or in the rifle itself.

Q. Do you know what that is used for? (Hands witness cartridge he first identified.)—A. I do not.

Q. Is that the guard ammunition or gallery practice?—A. I have never examined personally a single guard cartridge. Since they have been used I have only had to do with their issuance in quantities and it never has been necessary for me to ever break a package.

Q. They are not manufactured down at your place at all?—A. No, sir.

(The witness was then excused.)

FELIX VALDEZ CALDERON, a witness for the prosecution, being duly sworn, testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

(The witness was sworn through an interpreter.)

Q. Do you speak English?—A. No, señor.

Counsel for the accused:

I don't think that oath was interpreted exactly as you gave it. Let him repeat it.

(Interpreter repeated the oath to the witness.)

Counsel for the accused:

It is not the oath as it was given.

(The interpreter then repeated the oath after the judge-advocate.)

Q. Just give your name, your residence, and your occupation.—A. Felix Valdez Calderon.

Q. Your residence?—A. In Brownsville.

Q. Occupation?—A. City police.

Q. What was your occupation on August 13 and 14, 1906?—A. I was named in the point of the city of Brownsville.

Q. What do you mean by being named in a point of the city of Brownsville?—A. Between two streets in the city of Brownsville.

Q. Do you mean posted as a policeman?—A. Yes, sir.

Q. Where were you about 5 a. m. of August 14, 1906?—A. I was accompanying the commander of the Brownsville police.

Q. What is his name?—A. George Connor.

Q. Were you in the neighborhood of the Miller Hotel about this time?—A. We entered in that direction by the alley in the direction of the Miller Hotel through the alley.

Q. From what direction?—A. In the direction of the Miller Hotel, through the alley.

Q. Where were you proceeding from?—A. We was going from the market and entered the alley that turns to the Miller Hotel.

Q. Did you see anyone in this alley about this time?—A. Almost getting out of the alley I saw Juan Cerda, an old man, and advanced a little in front of the commander captain of the police.

Q. What was Juan Cerda doing about this time?—A. I saw him stoop and grab something, and I advanced to see what he was doing.

Q. What was he getting?—A. I asked him what he was picking up, and he said that he had found something that looked like a belt.

Q. Looked like a belt or what?—A. I then saw it and took it and spread it out and told him to give it to me, that this belongs to the black troops, so as to give it to the commander.

Q. Well, what was this object that you thought belonged to the troops?—A. Because at this time there was no more scandal than what had been during the night.

(Reporter reads last question.)

A. It is something what we call bandolero.

Q. Do you know what a bandolier is?—A. I named it a belt, where you put in cartridges.

Q. Would you recognize one if you saw it?—A. I could not swear that it is the one I picked up, but perhaps could distinguish one.

Q. Was it similar to that? (Hands witness bandolier.)—A. Entirely the same.

Q. How do you recognize it as being the same sort of bandolier as the one found?—A. It had all these little boxes the same; entirely the same.

Q. About what place was this bandolier picked up?—A. Mr. Juan Cerda found it close to the back gate.

Q. The back gate of what?—A. The Miller Hotel.

Q. How far from Thirteenth street?—A. Just what you would measure the width of the street and the entrance.

The court:

What was the last part of that answer?

A. It measured the street and the entrance. The street was about this wide; the alley goes to that gate; it is a narrow alley just as you go in.

Q. Do I understand you to say this was found at the mouth of the alley?—A. I said Juan Cerda found it inside the alley and gave it to me.

Q. About how far inside the alley off Thirteenth street?—A. Just about this side of the back gate I met Juan Cerda.

Q. What became of this bandolier?—A. I gave it to the commander.

Q. After you took the bandolier from Juan Cerda what did you do then?—A. I went to picking up blank cartridges—those long ones.

Q. What do you mean by blank cartridges?—A. Those cartridges that the troops use.

Q. Do you mean by blank cartridges cartridges that had been already discharged?—A. I found some with bullets also.

Q. Where did you find any?—A. I was picking them little by little, and where I found a whole lot was on Fourteenth street, just down Fourteenth street where it is the corner of an alley in front of a house—I can't remember his name. He had his family there, but I can't remember his name. I found many cartridges there and picked up some.

Q. About how many?—A. I think I picked there over fifteen myself.

Q. What did you do with these?—A. I picked them up and continued down the alley.

Q. Did you see any officer or soldier about this time?—A. I went when the morning was more clear and you could see a whole lot, and close to the alley, by the wall, a gentleman walked out with leggings on, and he had a pistol on his hip and a red belt; he wasn't a soldier, but was dressed privately just like a citizen. He didn't have leggings like the ones soldiers use; he had red ones of leather.

Q. In your opinion, was this man an officer of the Army?—A. Yes, sir; he was.

Q. Did you see him find anything?—A. He picked up two cartridges and went up to the wall, where you could see a negro soldier with a big gun, and showed the negro the cartridges, because I saw them in his hand.

Q. Where did he pick these cartridges up?—A. Inside the alley.

(The witness answered the last question without it being interpreted.)

The court:

If the witness can talk English——

Counsel for the accused:

We would like to have him talk it if he can.

(The interpreter asked witness if he could speak English and he answered:)

A. I understand one or two words.

Q. Was there anything in this bandolier you saw Juan Cerda pick up?—A. I think there was a little empty box; I am not sure.

The court then took a recess until 4 o'clock p. m., at which hour the members of the court, the judge-advocate, the accused, his counsel, and the reporter resumed their seats.

CROSS-EXAMINATION.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. How long have you been a policeman?—A. Some seven or eight—close to eight years.

Q. Are you an American citizen?—A. Yes, sir.

Q. Where did you start from with the chief of police the morning of the 14th?—A. From the market.

Q. What time?—A. The morning was almost arriving.

Q. What hour was it?—A. I am not sure what time it was, but day was coming on.

Q. Was the sun shining?—A. Not yet.

Q. Where did you go to first?—A. He and I entered the alley that goes to the Miller Hotel.

Q. How did you get there? Tell us what streets you went over?—A. We went down Twelfth street, entered the alley called El Gayo, the corner of the alley that goes directly to the Miller Hotel.

Q. Where is the market?—A. Between Twelfth and Eleventh streets.

Q. And what other streets?—A. Only those two.

Q. Does no street pass it on the other two sides?—A. There is.

Q. What are they?—A. One is Tenth and the other is Thirteenth.

Q. He don't understand. I am asking about the four streets that pass on the four sides of the market.—A. We went through there.

Q. No; he hasn't answered it yet. I want to know what four streets are on the four sides of the market?—A. The streets are recognized as Eleventh, Twelfth, Thirteenth, and Fourteenth.

Q. What streets run the other direction by the market?—A. I don't know them by name, but there is one street running on each side.

Q. He doesn't know the name of them?—A. I am not sure whether they call one of them Isabel or not, and I don't know the other one.

Q. What does he call this alley that passes by the Miller Hotel?—A. It is known as the "Callejon del Gayo" that goes up to the Miller Hotel.

Q. Is that the same alley that passes directly by the Cowen house?—A. What is that? Cowen?

(Reporter reads last question.)

A. Louis Cowen?

Q. Yes.—A. Yes, sir.

Q. Now, he passed down that alley from Twelfth to Thirteenth street, did he?—A. Yes, sir.

Q. And where was this Juan Cerda when he first saw him?—A. I saw him coming a little on the other side of the back gate when I saw him.

Q. Where was the witness when he first saw him?—A. The commander and I hadn't passed the street when I saw Juan Cerda in front.

Q. Not passed Thirteenth street?—A. Not passed Thirteenth street.

Q. They were still in the alley on the further side of Thirteenth street?—A. We were still on the inside of the alley and we were on this side of Thirteenth street; then I crossed to the other side to go with Juan Cerda.

Q. Was Juan Cerda inside the gate of the Miller Hotel?—A. Not inside.

Q. Does that gate open out into the alley or open into the yard?—A. I am not sure on which side it opens.

Q. Well, was it open that morning?—A. I am not sure whether it was open.

Q. Well, whereabouts exactly did Juan Cerda pick up this thing?—A. He was a little on the other side of the gate, I imagine; I am not sure whether he was right in front the gate or a little on the other side.

Q. Did he actually see him pick up this thing?—A. I did.

Q. What did he do with it when he picked it up?—A. After saluting him I asked him what he had found.

Q. No; what did he do with it when he picked it up?—A. He had it in his hand.

Q. Did he pick up anything else besides that?—A. Who?

Q. Juan Cerda.—A. He only gave me that bandolier.

Q. What is this Juan Cerda's business?—A. He is a poor man; he is a vegetable man.

Q. What did he say to Juan Cerda, exactly?—A. What he had found and he said, "This thing."

Q. Is that all he said to him?—A. No. "Give it here; that is something that belongs to the negro soldiers."

Q. Is that all he said—the witness?—A. He gave it to me and I gave it to the commander.

Q. Is that the commander of police he is talking about?—A. Yes, sir; commander of police.

Q. Did this witness pick up any shells at this place?—A. From there I started picking up shells.

Q. How many did he pick up right there?—A. I am not sure whether I picked up two or three, and I went picking on as I went.

Q. Did he pick up any outside the alley?—A. Outside of which part of the alley?

Q. There at the Miller Hotel?—A. I picked up there two or three; perhaps more.

Q. Well, did he pick up any except in the alley itself? That is what I want to know.—A. I crossed Fourteenth street and right in front——

Q. No; I don't want that. What I want to know—I have no objection to that going in the record, but it is not in answer to my question—whether right there at the Miller Hotel he picked up any except in the alley itself?—A. Those are the ones I am making reference to.

Q. Ask him if he understands a plat or drawing.—A. No, sir.

Q. Well, did he pick up any on Thirteenth street, directly on the street?—A. No, sir; just as you cross Thirteenth street I raised the first shell, and I think it was two or three.

The judge-advocate:

Did he not say the mouth of the alley?

Counsel for the accused:

I understood him to say within the mouth of the alley. I would be glad to have you repeat it.

(Interpreter repeats question.)

A. Right in the corner of the alley on the other side of the street. When day was coming on the commander and myself were there, and we could see Juan Cerda in the distance.

The court:

That is not interpreted fully, Mr. Interpreter. What is the last answer?

(Reporter reads last answer.)

Q. Now tell the court where you found the next cartridges?—A. Just as I crossed Fourteenth street right in the corner where it makes a corner on one and the other side.

Q. He didn't find any more until after he had crossed Fourteenth

street?—A. Up that way there wasn't any more; right there I picked up some. I picked up some right in front of Louis Cowen's, and there was many shells.

Q. Well, that was on Fourteenth street?—A. On the other side, right in front of the mouth of the alley.

Q. Did he go down Fourteenth street toward Elizabeth street from there?—A. No, sir; I went down the same alley toward the post.

Q. How close to the wall did you go?—A. Very close. When that member was coming out, or soldier——

Interpreter:

"Jefe" he calls it, and that is a "boss," but he may be a lieutenant or captain.

The court:

Please have him repeat his answer.

A. I went down the alley until very close to the wall, when an official—I don't know whether he was a lieutenant—who had on red leggings, and a pistol at his waist——

(Reporter reads the answer at request of court.)

A. Did you want me to finish telling this?

A member of the court:

I submit that it wasn't translated correctly.

Counsel for the accused:

I ask the court if we can't have a little more accurate interpretation of this witness's testimony. It is very unsatisfactory when you don't either get the question or the answer placed exactly as you intended it. I don't think we are getting good results with this witness and I am sure the witness don't understand and the court don't understand. I am not a finished scholar in Spanish, yet I don't believe that last question was interpreted properly, and I will ask the court if it won't suspend proceedings until we can get an interpreter that can interpret the proceedings accurately.

The interpreter:

I have been interpreting to the best of my ability. As far as I have understood him, I have submitted it. I would like to see any part of it that has not been interpreted right, so as to give my advice about it.

A member of the court:

I raised the objection. He said "Wall of the garrison;" the words "Of the garrison" were not translated.

Counsel for the accused:

He said he went down the entire length of the alley, which wasn't translated. Now, there has been so many of these omissions that we don't feel warranted in going ahead with the cross-examination unless you insist on it.

(The court then instructed the witness to go slow in his talk, and also cautioned the interpreter.)

(The reporter read the last question, as follows: "Q. How close to the wall did you go?")—A. A very close distance, where you could distinguish persons. The morning was clear.

Q. Where was this officer when you saw him?—A. He went out in the direction of the alley.

The interpreter:

May it please the court, the witness himself gets me mixed up in the translation of this transaction and that is why I can not give a full and distinct translation of it. I can only give a substance of what he means.

The court:

That is what they don't want you to do.

A member:

I would like to say that I understand Spanish myself, and the witness answers so that it can not be intelligently interpreted.

(The court again instructed the witness to talk more slowly.)

(The reporter then read the last question, as follows: "Q. Where was this officer when you saw him?") Q. Exactly; where was this officer when you first saw him?—A. He went to the mouth of the alley.

A member:

He said "Salio," which means "Was going out."

A. He was going out of the gate to the mouth of the alley.

Interpreter:

He didn't say "gate;" he just said going out. If you want me to add some to my translation I will do it.

A member:

That thing is entirely unintelligible and I don't understand it.

The court:

I think you had better suspend the examination of this witness and secure the services of another interpreter—an older interpreter.

The court then, at 4.27 o'clock p. m., adjourned to meet at 10 o'clock a. m. on February 21, 1907.

CHAS. E. HAY, Jr.,
Captain and Judge-Advocate, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., February 21, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocate. The accused, his counsels, and the reporter were also present.

The reading of the proceedings of February 20 was dispensed with.

Mr. Tarver Bee was duly sworn as interpreter.

FELIX VALDEZ CALDERON was reminded that he was still under oath.

CROSS-EXAMINATION CONTINUED.

Q. Ask him exactly where he picked up the first shells.—A. Passing Thirteenth street, entering in the alleyway of the Hotel Miller.

Q. Was it within the alley, or was he still on Thirteenth street?—A. Thirteenth street, on the edge of the corner of the alley.

Q. How many did he pick up in the alley there?—A. Two or three; not certain; it may have been more.

Q. Did he pick up any more shells or cartridges than the first two or three named in that immediate vicinity?—A. Yes; I lift up more.

Q. In that immediate place?—A. All down the alley, coming out on Fourteenth street.

Q. How many did you pick up before you got to Fourteenth street?—A. Only those first that he picked up at the entrance of the alley.

Q. How many did you pick up at the crossing of the alley and Fourteenth street?—A. He is not certain, but it is more than 15 shells.

Q. Did he pick up any cartridges at that point?—A. He says he is not certain whether two or three with balls—bullets would be the word.

Q. Did he pick up any cartridges or shells on Fourteenth street to the right or left of the alley?—A. In the alley is where he lift up the shells.

Q. Repeat the question please. Did you pick up any cartridges or shells in Fourteenth street, to the right or to the left of the alley?—A. He wants to know if he can explain how that street runs there?

Q. We know how it runs. We want to know if he picked up any on Fourteenth street, away from the alley, on either side.—A. On both sides in the alley in front of Louis Cowen's house.

Q. Did he pick up some on Fourteenth street, directly in front of Louis Cowen's house?—A. Inside the alley.

(With the permission of the court the interpreter then took witness to the map and explained it to him thoroughly.)

Q. Ask him whether immediately in front of Louis Cowen's house on Fourteenth street he found any cartridges or shells.—A. No, sir.

Q. Did you find any on Fourteenth street in front of the house of Mr. Garza?—A. Inside of the alley.

Q. Ask him whether he found any on Fourteenth street.—A. No, sir.

Q. Did he find any in the alley on the side of Fourteenth street away from the garrison?—A. Those that he lift up on the corner of the Hotel Miller.

Q. Where did he find the next ones in the alley—what point?—A. Going into this alley. (Witness here places his finger on the alley southeast of Fourteenth street, and between the houses of Louis Cowen and Mr. Garza.)

Q. How many did he find there?—A. From fifteen up.

Q. Is that as near as he can recall the number?—A. He is not certain, but something like that.

Q. Can he tell us whether he found any cartridges there?—A. Those that he found—he found some with bullets in them.

Q. Does he remember how many he found with bullets?—A. No, sir; whether it was two or three—it was not many.

Q. Does he know whether he found those two or three there or at another point?—A. Found them there.

Q. Where did he go to from there—from the mouth of the alley, I mean?—A. Going down the alley, looking for more shells.

Q. How close to the garrison wall did he go?—A. Right close to the wall of the garrison.

Q. Did he go out of the mouth of the alley into the road by the garrison wall?—A. No, sir.

Q. How far from that was he?—A. A short distance, he says.

Q. Tell him to show the court what the distance was from the road to where he stopped.—A. He is not certain, but about as far from

here to the corner of the room, more or less. (Distance indicated, about 50 feet.)

Q. Where was the officer when he first saw him?—A. He came out of the alley, he thinks; he was standing there looking down.

Q. He came out of the alley?—A. He came from the street, and he says it is very narrow there next to the wall. He came in toward the alley and was looking down toward the ground.

Q. How far did he come down the alley toward the witness from along the street by the garrison wall?—A. Very little, and he remained standing.

Q. How long did the witness remain there, and how long did the officer remain there?—A. Just saw him stoop down and pick up some cartridges and go in and hand them to a negro who was inside the wall.

Q. He is certain he saw him hand them to a negro inside the wall?—A. He did not see him deliver them.

Q. What did he see him do to this negro inside the wall?—A. The negro was inside the wall, with a gun in his hand, and he went up there and stooped before he got there, and then he showed him the shells.

Q. He is certain he showed him the shells?—A. Yes, sir.

Q. Can you read?—A. Very little.

Q. Can you write?—A. Only write his name.

Q. Can you read English?—A. Less.

Q. Ask him how he distinguished those marks on the bandolier that he spoke of yesterday if he can't read.—A. He says that he has not said here nor there either that he ever saw those marks.

Q. What did he distinguish it by?—A. He says because Juan Cerda gave it to him in his hand.

Q. He said that they were "exactly equal." Ask him how he knew that.—A. He said yesterday it was exactly like that one (picking up a bandolier from the table).

Q. Tell the court how he knows it.—A. Because he saw it in his hands; one like that one; Juan Cerda gave him.

Q. Ask him if he understands the nature of an oath.—A. Yes, sir.

Q. What is the oath that was administered to you?—A. Tell the truth, and he comes to tell the truth only.

Mr. HERBERT ELKINS, a witness for the prosecution, was duly sworn, and testified as follows:

DIRECT EXAMINATION

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please give your name, residence, and occupation.—A. Herbert Elkins, Brownsville, Tex.; hotel clerk.

Q. Where were you living on August 13, 1906?—A. I was living in the Leahy Hotel, Brownsville.

Q. Where were you about midnight August 13, 1906?—A. I was in the hotel, in my room.

Q. Did anything unusual occur upon this night? If so, state fully to the court what you saw and heard.—A. I returned to my room about 11.30, and about five minutes till 12 I heard some shooting

down between—it was just inside the wall or just outside of it, close on to the—I don't know what's the number of the barracks—it is the second one from the river. They shot there a good many times—I don't know just how many—and I thought it was a fire; but a little later I saw two men, two nigger soldiers coming up the alley, the alley that opens east of the Cowen house and opens into Fourteenth street.

Q. Who were these men?—A. They were nigger soldiers.

Q. How did you recognize them as such?—A. By the way they were dressed, and I knew they were niggers by looking at them.

Q. Describe their dress, if you can.—A. They had on khaki pants, leggings, and they had on belts, and one or two of them had on those light summer shirts, and some of them had on coats—whether they had on caps or hats—some of them had on caps and some hats; but the two I saw in lead, I don't know what they had on, I didn't notice.

Q. What did these two men you saw in lead do?—A. They seemed to be the leaders. They were in advance of the others by 75 or 100 feet. They came up the alley and they were stooping over carrying their guns, and as they got close to the corner of the alley opening by the Cowen house, close to Fourteenth street, one of them got into a mudhole there, just about 6 feet down the alley from Fourteenth street, and he pulled himself out and got on the sidewalk near the other side of the alley from the Cowen house——

Q. You say pulled himself out. Did he actually fall down in it?—A. No; he didn't fall. He just kind of bogged up in it. As he got out the other man that was with him was a few feet behind him. He told the other negro soldier to not go that way, to come toward him—keep out of the mudhole.

Q. What occurred after these two men had their encounter with the mudhole?—A. They had been shooting down the alley, and they had, I suppose, about two or three shots each, shells in their guns. They emptied them toward the Cowen house. Then they put in new clips and one of the men had trouble in getting the clip in his gun and he got the other to help him, and then they emptied those clips and put in new clips, but did not fire any more. They started up the alley back of the Leahy Hotel.

Q. In what direction?—A. Direction of the Miller Hotel.

Q. And passed out of your sight, I suppose?—A. Yes; they passed up out of my sight.

Q. What did you hear after this?—A. About a squad of negro soldiers—about 8 or 15, somewhere along there; I don't know just how many—came running up following the two leaders after those had got out of sight, but when they got to the corner there they didn't seem to know which way to go, but part of them started up the alley like the two leaders went and part started down Fourteenth street, into Elizabeth. When they got part of the way, just about in front of the Cowen gate they stopped, like they didn't know which way to go; those two leaders had stopped, I suppose, up about back of the hotel. They hollered for them to come up that way and part of them—I don't know whether all—turned back or not, but part did, and, as they turned, they shot about three or four times into the Cowen house from the front, and ran up the alley.

Q. Were there any words of command given for the firing upon the Cowen house?—A. You mean commanding them to fire?

Q. Yes.—A. None that I heard.

Q. At what gait were these men moving?—A. They were running when they came up the alley; they were stooping over, bending over, running.

Q. When they left the alley did they also run then? I mean to say when they proceeded on down past the Leahy Hotel.—A. Yes; they ran.

Q. Did you see those men at any time later in the evening?—A. I saw in the company that Captain Lyon took out that night—Mrs. Leahy and I were standing in the gateway of the hotel, and as the company came by they stopped here on the sidewalk, and there was one in the company who stopped in about 6 feet of us, and he said, with an oath, that he would come back to-morrow and finish the rest of them——

Q. Rest of what?—A. He would kill the rest of the white people.

Q. Did this small group of men you saw by the Cowen house doing the firing—did you see them again, as far as you know that night?—A. I didn't see them, only the one I took to be the leader, in the company.

Q. You happen to know what company this was that Captain Lyon had that night?—A. No, sir; I do not.

The court then took a recess until 11.10 o'clock a. m., at which hour the members of the court, the accused, his counsels, the reporter, the witness, and the judge-advocate resumed their seats.

CROSS-EXAMINATION.

QUESTIONS BY THE ACCUSED.

Q. How old did you say you were?—A. I lack a few months of being 18.

Q. You understand the nature of an oath?—A. Yes, sir.

Q. And the effect of violating it is what?—A. Yes, sir.

Q. Do you know what the effect is, to violate that oath?—A. Yes, sir.

Q. And what is it?—A. Why, it's perjury.

Q. And you are a hotel clerk, you say?—A. Yes, sir.

Q. How long have you been a hotel clerk?—A. About two months.

Q. And where have you clerked?—A. You mean clerk in a store?

Q. As a hotel clerk?—A. Only in the Leahy Hotel.

Q. For the past two months. What did you do before that?—A. I was clerking in a confectionery.

Q. Tell the court exactly when you commenced to be a clerk for the Leahy Hotel.—A. Well, I don't know exactly when I commenced; it was somewhere about two months ago.

Q. Was it before or after Christmas?—A. It was after Christmas.

Q. Was it before or after New Year's?—A. It was before New Year's.

Q. How long before New Year's?—A. Just a few days.

Q. Then it was between New Year's and Christmas?—A. Yes, sir; I think so.

Q. Where were you born?—A. I was born at Sutherland Springs, Tex.

Q. How long have you lived in Brownsville?—A. Ever since July 9, last year.

Q. What did you do before you went to Brownsville?—A. I attended school.

Q. At your home at Sutherland Springs?—A. No, sir; at San Marcos. State Normal.

Q. Did you testify before the grand jury?—A. Yes, sir.

Q. Did you testify before Mr. Purdy and Major Blocksom?—A. Yes, sir.

Q. Did you read your evidence over that you gave before Major Blocksom and Mr. Purdy?—A. Yes, sir; I read it.

Q. And signed it?—A. Yes, sir.

Q. And swore to it?—A. Yes, sir.

Q. Do you know who you swore to it before?—A. Major Blocksom.

Q. Didn't you subscribe and swear to that before Louis Kowalski, clerk of the district court?—A. Yes, sir.

Q. But you were first sworn by Major Blocksom before you gave your evidence, were you not?—A. Yes, sir.

Q. So you gave your evidence under oath and afterwards signed, or subscribed and swore to it?—A. Yes, sir.

Q. What had you been doing the night of the 13th of August?—A. I had been in the store until about 10.30, I suppose. I went to the hotel.

Q. What hotel?—A. The Leahy.

Q. What did you do then?—A. A young lady there wanted me to walk over to the Cowen residence with her, she wanted to return some papers. There was a children's party over there. I walked over with her and we went in, and the party broke about 11.30, I think, and the children wanted us to go home with them. We saw the crowd of them home, different parts down next to the post. We came back and I had just gotten up to my room and gotten to bed when the shooting commenced.

Q. You were in bed when the shooting commenced?—A. Yes, sir.

Q. Do you remember the various places you went to with these children?—A. I remember some, not all, because I did not know them.

Q. How long did it take you to do that?—A. It took, I suppose, just about an hour, nearly an hour, some time along there.

Q. Then you must have commenced what time?—A. About 11.30, I suppose.

Q. I say what time must you have commenced to go around taking these children home?—A. I don't know just when, somewhere between 11 and 11.30.

Q. And it took you an hour to do it?—A. Somewhere less than an hour.

Q. How much less?—A. I don't know, I didn't time it.

Q. What time did you get back to the hotel? Did you note the time then?—A. I got back about twenty minutes 'til 12 o'clock.

Q. You noted the time then did you?—A. No, sir; I didn't note it; but I know it was just a few minutes later until the shooting commenced.

Q. You had gotten into bed?—A. Yes, sir.

Q. And you were asleep?—A. No, sir.

Q. You were not asleep?—A. I was not.

Q. What shots did you hear first?—A. I heard some shots down just inside or just outside of the wall.

Q. Do you understand a plat, a plan?—A. Understand what?

Q. What a plan is or a plat?—A. No, sir.

Q. Do you know what that is there hanging on the wall?—A. Yes, sir.

Q. What is it?—A. It is a map or a plan of the city.

Q. Can you by examining it tell what the different things are supposed to be?—A. Yes, sir.

Q. Streets?—A. Yes, sir.

Q. Do you know where Mrs. Leahy's hotel is, what street it is on?—A. Yes, sir.

Q. Tell the court.—A. It is on the corner of Elizabeth and Fourteenth.

Q. What kind of a building is it?—A. The front part of it is a one story, and the back part is a two story, made of stone or brick.

Q. All of it of stone or brick?—A. The back part is; the front part—part of the front part is made of lumber, I think.

Q. When you say of stone or brick can you tell which it is?—A. I know the back part is made of brick.

Q. Does all of it set right on the street?—A. Well, the front part faces on Elizabeth and then the side goes down from the corner of Elizabeth down Fourteenth to the alley.

Q. Is it directly on Fourteenth street—that is, right on the sidewalk—all of it?—A. Yes, sir.

Q. You are sure that the one-story part and the two-story part are both directly on the sidewalk?—A. The one-story porch is on the sidewalk.

Q. There is a porch to it, is there?—A. Yes, sir.

Q. Will you go to the map and show the court where that is, the Leahy Hotel?—A. Right here.

Q. Point out the Cowen house.—A. It's right here.

Q. What are the numbers on those two houses, respectively?—A. Three and two.

Q. What are the other houses on the corner there of the alley?—A. Right there?

Q. Yes.—A. That is a Mexican's residence.

Q. Do you know what his name is?—A. I believe it is Garza.

Q. What's across Fourteenth street from that?—A. Another Mexican's house.

Q. Do you know what his name is?—A. It is a Mexican widow. I don't know her name.

Q. Do you recognize the part to your right hand there on the plat off from the town? Do you know what that is?—A. Yes, sir.

Q. What is it supposed to be?—A. The barracks.

Q. The whole thing, I mean; the other side of the road.—A. The Government reservation.

Q. Fort Brown, eh?—A. Yes.

Q. Do you know what's supposed to be the barracks there?—A. Yes, sir; these four.

Q. Do you recognize those letters there?—A. Yes, sir; you mean these?

Q. Those in red.—A. Yes, sir; the companies.

Q. Those indicate the companies that occupied those barracks. What was that other barracks at that time?—A. Which, this?

Q. Yes.—A. That was vacant.

Q. Do you know what that is up there marked "A?"—A. That's the guardhouse, I think. I am not sure, but I think it is the guardhouse.

Q. Do you know where the officers' quarters are?—A. Yes, sir; right here.

Q. Do you know where the administration building is?—A. Yes, sir; right here.

Q. What's that building nearest to you there?—A. That's a school.

Q. How many shots did you hear when you first heard shots?—A. I can't say just how many.

Q. Your best recollection.—A. Some 15, something like that—the best I could tell—there might have been more.

Q. Do you think there were more?—A. Yes, sir; I think there must have been more. Anyway there was about 15.

Q. Where were those shots, as near as you can place them?—A. They were just inside the wall next to B barracks I think, the best I could place them.

Q. You think they were right next to what is called the B barracks there?—A. Yes, sir.

Q. Oh, show the court where you were at that time; what room you were in in the Leahy House.—A. I was in the room in the second story back of the Leahy Hotel; it is the room nearest the alley.

Q. Next the alley on the second story?—A. Yes, sir; and on Fourteenth street.

Q. How many windows in that room on Fourteenth street?—A. One opening into Fourteenth street and one on the other side.

Q. Opening toward the alley you mean?—A. No, sir; not toward the alley.

Q. Opposite practically then?—A. Yes, sir.

Q. That is toward the town?—A. Yes, sir.

Q. Who occupied the next room to you on the second story?—A. Judge Parks.

Q. And the next room to that, who occupied it, toward Elizabeth street?—A. There was a hallway next to it.

Q. Wasn't there another room beyond the hallway?—A. Yes, sir.

Q. Was there a window in this hallway toward the garrison?—A. Yes, sir; I think there is.

Q. Are you sure about it?—A. No, sir; I am not.

Q. How many windows toward the garrison in Judge Parks's room?—A. There is one.

Q. And in the room beyond the hall toward Elizabeth street how many are there?—A. I am sure there's one.

Q. You don't know whether there's any more?—A. I don't know whether there's any more or not.

Q. Your best recollection is, then, that those first 15 shots were fired right close to B barracks there, between B and the wall?—A. Yes, sir.

Q. And you are quite sure they were inside the wall?—A. I am quite sure they were either just outside or just inside. I could only judge by the sound.

Q. What is on Fifteenth street on the other side of the wall there by B barracks?—A. You mean across?

Q. What is there—a fence, or what is there?—A. Just across from the post wall?

Q. Yes; from the telegraph office down to the alley?—A. Residences.

Q. Who lives there?—A. I could not tell you.

Q. You know where the telegraph office is, don't you?—A. Yes, sir.

Q. You know who lives on that corner there, of the alley and Fifteenth street—Cowen alley and Fifteenth street?—A. No, sir.

Q. Do you know whether there's a fence along there on this alley, along this road, Fifteenth street, from the corner of this alley down to the telegraph office?—A. Yes, sir; there's a fence there.

Q. What kind of a fence is it?—A. A board fence, a paling fence.

Q. Not a solid board fence, is it?—A. I think not—I am not sure.

Q. Might that firing have been inside that?—A. I took it to be just outside or just inside the post wall.

Q. You don't think it could have been inside that place there?—A. It could have been there, but I don't think it was.

Q. Did you know what kind of sounds these first 15 shots made?—A. Made a sharp report.

Q. All of them?—A. Yes, sir; all just alike.

Q. And they all went off together, or were they so you could count them readily?—A. They were kind of scattered; did not all go off at once.

Q. Then they were not in a volley?—A. No, sir; but there was some volleys, or kind of volleys fired.

Q. Right at that time?—A. Before that. I don't know just where, somewhere down there; some volleys fired. Not exactly volleys, they were kind of scattered shots.

Q. Do you know what a volley is?—A. Yes, sir.

Q. Tell the court what it is.—A. It is the firing of all guns together, so it would sound as one report.

Q. At this first moment, when you were aroused and heard this 15 or more shots, were they in a volley or were they scattered?—A. They were scattered.

Q. How long after that before you heard more shooting?—A. Just a few seconds.

Q. You are very sure about that?—A. I am sure.

Q. Where was that second shooting?—A. Just a piece up the alley.

Q. Show us what you mean by a piece up the alley.—A. Just about here. (Witness indicates on map directly opposite house marked "7," in the alley.)

Q. How many shots did you hear at that point?—A. There were 3 or 4 shots.

Q. Then how long an interval before you heard some more shots?—A. Just a few seconds longer, when they got to the corner.

Q. It took them a few seconds, then, to get to the corner?—A. Yes, sir.

Q. Firing commence immediately then?—A. Not immediately; no, sir.

Q. How long after they got to the corner was it before they commenced firing?—A. Just a few seconds.

Q. Did you see them at this time?—A. Yes, sir.

Q. How many did you see?—A. I saw two.

Q. Where were they when they fired these shots?—A. They were just about 6 feet down from Fourteenth street, down the alley.

Q. Go and show us, please.—A. Just about right there.

Q. Where was the mudhole you spoke of?—A. Right along here.

Q. Right inside the alley, was it?—A. Yes, sir; extended out a little beyond the mouth of the alley.

Q. Out into Fourteenth street, beyond the mouth of the alley?—A. Yes, sir.

Q. Have any water in it?—A. No, sir.

Q. You couldn't see any water in it?—A. None that I could see; the mud was——

Q. Which direction did these men fire in at that time?—A. Into the Cowen house.

Q. How could you determine that?—A. By the way they pointed the guns.

Q. Where was the next shooting you saw, or heard, rather?—A. The next shooting was after these two men had gone up the alley.

Q. What do you mean by "gone up the alley?"—A. These two men, after they shot here they ran up this way.

Q. Go back to those two men; how many shots did they fire there?—A. About two or three shots each; then they put in new clips. One man had trouble with his gun when he went to put in his new clip, and he got the other one to help him. When he got his gun fixed, both of them emptied their clips into the Cowen house. They put new clips in, but did not shoot any more, and ran up this way.

Q. You say they were 6 feet back in the alley from Fourteenth street?—A. Just about 6 feet.

Q. Which side of the alley were they on?—A. They were on the side opposite the Cowen house, next to the doorstep of this building right here.

Q. Is there a doorstep in that building that comes out onto the alley—I mean the Garza house?—A. A doorstep or something right in here. I don't know whether a doorstep or not, but something, a step of some kind. (Witness indicates toward the rear of the Garza house.)

Q. You say they fired two or three shots apiece there?—A. They fired about seven or eight shots apiece.

Q. Those two men?—A. They first fired about 2 or 3 shots each, because they had shot some down the alley, once or twice.

Q. At that particular point?—A. They fired about three shots there, then their clips—the clips, I believe, are five cartridges—which made eight shots.

Q. Did they fire those clips full right there?—A. They fired those clips full; they fired about seven shots each.

Q. Before they left that particular point, 6 feet inside the alley?—A. Stood right in one place.

Q. And right by that mudhole, before they passed the mudhole?—A. Yes, sir.

Q. They were still right at the Garza steps, were they?—A. Yes, sir.

Q. You are sure they were at the Garza steps when you saw them doing that?—A. They were right here.

Q. Were they right by the Garza steps?—A. They were just about right here; whether there are steps there I don't know.

Q. That's where you think the steps are?—A. Yes, sir; where I think the steps are; a window there; either a window or a door.

Q. And you think there are steps there?—A. Yes, sir.

Q. How were these men standing with respect to each other?—A. They were standing right opposite each other when they did the shooting.

Q. And facing?—A. No, sir; they were not facing; they were facing the Cowen house.

Q. What did these two men do then?—A. After they fired?

Q. This number of shots. What did they do then?—A. They ran up the alley, up back of the Leahy Hotel.

Q. You say they had some trouble inserting these clips?—A. One of them did.

Q. How long did it take them to get that clip adjusted?—A. Just a few seconds.

Q. How long did they stay there doing this shooting you have described?—A. They stayed there about two or three minutes.

Q. And they ran across the alley then, you say?—A. They ran across Fourteenth street into the alley.

Q. Then did they pass out of your view?—A. Yes, sir.

Q. Could you hear them running, or did you see them?—A. I couldn't hear them or see them.

Q. You couldn't hear them or see them?—A. Not those two; no, sir.

Q. What do you mean, you couldn't hear them or see them?—A. I mean I could not hear them run after they passed the point along here.

Q. You couldn't see them after they passed the middle of the intersection of Fourteenth street and the alley; is that what you mean to say? That's where you pointed.—A. Yes, sir.

Q. Now, you said something about seeing some others come up?—A. Yes, sir; I saw——

Q. How many were there in that bunch?—A. I saw about 8 or 12, not less than 8 and not more than 15 at most.

Q. And had that bunch been shooting previous to the time they came up there?—A. I think they had.

Q. Where did you think they had been shooting?—A. Had been shooting down right along here somewhere.

Q. Near the mouth of the alley?—A. Yes, sir.

Q. You couldn't see them shoot there, though?—A. I could not see them.

Q. Where did that bunch go to?—A. They came on up here, Fourteenth street. They stopped right here, and part of them started up this alley and part started down here.

Q. What did they do?—A. These two soldiers?

Q. I am talking about this bunch of not less than 8 and not more than 15; what did they do?—A. Somebody gave the command for them to come up the alley, evidently these two soldiers, I suppose, and these men that came down this way—I don't know whether part of them went in Elizabeth or not; but part of them turned to follow the leaders up the alley, and as they turned they fired three or four shots into the Cowen house from the front.

Q. There were only three or four shots fired into the Cowen house, then, from the front—at that time, I mean, by those men?—A. Only three or four I saw. They might have shot more from along up here; it was out of my sight.

Q. You don't know whether they did or not?—A. They were shooting; I don't know which way.

Q. But you now swear there were only three or four shots fired directly from Fourteenth street into the Cowen house that you know of yourself?—A. I only saw three or four.

Q. You could see those men shoot?—A. Yes, sir; I could see them shoot.

Q. Could you see them work the guns?—A. Yes, sir.

Q. You say some of them might have gone down Fourteenth street toward Elizabeth?—A. Yes, sir; might have.

Q. What makes you think they might have?—A. I only saw when the crowd got just about here, the middle of Fourteenth street; part of them came over this way toward my room, under my window, and I couldn't see them.

Q. You couldn't see them?—A. No, sir; but the rest that stood out in the middle of the street I could, and I saw them shoot into the building and then run up this way.

Q. You don't know what became of these under your window?—A. No, sir; I don't know which way they went. I heard them.

Q. How were those two men dressed?—A. The first two men were dressed, one of them in khaki pants and leggings and a light-blue summer shirt, and the other one I——

Q. What kind of hat did he have on?—A. I did not notice his hat.

Q. What kind of shoes?—A. I did not notice his shoes.

Q. Don't know whether tan or black?—A. No, sir.

Q. You don't know whether he had on a hat or cap?—A. I didn't notice whether a cap or a hat; but he had a belt on.

Q. What kind of a belt?—A. One of these brown khaki belts, I suppose you call them.

Q. Where did he wear that?—A. Around his waist.

Q. Did he have suspenders on it?—A. Not that I could tell.

Q. How was the other man dressed there?—A. The other man—dressed in khaki, and he had on a khaki coat, the best I could tell.

Q. What kind of hat?—A. I didn't notice his hat.

Q. What kind of shoes?—A. Didn't notice.

Q. Did he have a belt on?—A. Yes, sir; he had a belt on.

Q. You are sure about that?—A. Yes, sir.

Q. Did you distinguish whether they had suspenders on them or not?—A. I didn't notice whether they had suspenders or not.

Q. Did you say that some of them went up Fourteenth street toward Washington?—A. They went as far as the alley, so far as I could tell.

Q. You couldn't see beyond the alley?—A. I didn't see.

Q. You didn't actually see any of them then go up toward Washington street from the alley, I mean?—A. No, sir; I saw them go right down Fourteenth and make a turn along here—a short cut.

Q. Show the court exactly how far down in front of the Cowen house these men actually came when you saw them.—A. The men that started into Elizabeth street?

Q. When they left the alley, how far down Fourteenth street in front of the Cowen house did they come?—A. They went just about there.

Q. And how far were they from the Cowen house when they fired into it?—A. Just a piece down——

Q. How far from the Cowen house were they?—A. Right in the middle of the street; I don't know how far.

Q. Fourteenth street you mean?—A. Yes, sir.

Q. And they fired three shots into it?—A. They fired somewhere along there, I am not sure; not less than three.

Q. Any lights in the Cowen house?—A. None that I could see.

Q. What color were these two negroes you saw up there?—A. They were black.

Q. Both of them?—A. Yes, sir.

Q. Neither what we call saddle color nor tan color?—A. No, sir; they were black.

Q. Were any of them you saw that night saddle or tan color?—A. Some of them in the main bunch that were tan color—saddle color.

Q. Any of them have freckles?—A. Not that I could see.

Q. You could not determine the freckles?—A. Not that I noticed.

Q. How many do you think were saddle color or tan color?—A. About two or three in the bunch that I noticed.

Q. Were they wearing hats or caps?—A. Some wearing hats and some caps.

Q. These tan-colored ones you saw, were they wearing hats or caps?—A. I did not notice. I noticed in the party some had caps and some hats; which ones I did not notice.

Q. You didn't notice the color of the shoes of any of them?—A. I did not.

Q. You are quite sure some of them had caps on, are you?—A. Yes, sir; sure of it.

Q. What was the color of these caps?—A. They were navy blue, or dark blue. They were blue all right.

Q. And the hats, what was the color of the hats you noticed?—A. They were those dark kind of khaki color; dark, or regulation; I don't know just what color you call it.

Q. You know the regulation hat, do you?—A. Yes, sir.

Q. Could you see whether they had cords around these hats or not?—A. They did not.

Q. Now, about the time of this first firing, did you hear any other noises of any kind at that time?—A. I heard something like a wagon moving down in the post.

Q. Whereabouts in the post?—A. Just about where the first shots took place, about C Company barracks.

Q. You heard a wagon moving there, did you?—A. Something sounded like a wagon; it might not have been, though.

Q. Hear any other noises?—A. None; only the men in the barracks.

Q. You heard the men in the barracks?—A. Yes, sir.

Q. What were they doing?—A. Some of them were on the porches.

Q. You could see them?—A. I could hear them running up and down, and I saw some of them shooting from the barracks toward town.

Q. You saw some of them shooting, did you?—A. Yes, sir.

Q. Where were you when you saw them shooting toward town?—A. I saw one or two shots from the window of my room, and then I went into Judge Parks's room and saw several more from his window.

Q. With respect to this first firing, when was it you saw them from your window?—A. It was after the men had gone uptown.

Q. How long from the time the first firing commenced?—A. I don't know exactly.

Q. About where were they uptown when you saw these men shooting from the barracks?—A. I couldn't tell you.

Q. Your best recollection.—A. They were somewhere up about the saloons, I suppose.

Q. But they had gone quite a ways up from the alley in front of the Leahy Hotel, or by the Leahy Hotel?—A. They were in the upper part of the street—alley.

Q. How many shots did you see from B Company barracks, or B barracks?—A. I saw several shots, and I saw some——

Q. Give us your best recollection of how many.—A. Somewhere like five or six; somewhere along there.

Q. Did you see any from any other barracks?—A. From my window I saw one or two shots from the end of C Company's, I believe.

Q. Is that your best recollection now—that you saw some from the end of C Company barracks?—A. I don't know just what barracks it is, but I could see a portion of it, the end of it from my window.

Q. Show the court which one you mean. You described B barracks. We want to know what the other one was.—A. It was C Company's.

Q. Show the court, please, what part of C Company barracks you saw that firing from.—A. I saw the firing from Judge Parks's room, right along here. (Indicates on map B barracks.)

Q. What did you see from your window?—A. Right here, as best I know. (Indicates the west end of C Company barracks.)

Q. Let's go back and fix that. You said first, as I understood you, that you saw some firing from B barracks while in your window. Is that correct?—A. From Judge Parks's window. Judge Parks's window is just about 6 or 8 feet——

Q. My recollection is pretty distinct that you said you saw some from B barracks from your own window. Did you see any from B barracks from your own window?—A. I saw it from Judge Parks's window.

Q. You didn't see any, then, from B barracks from your window?—A. I did not.

Q. Then the only shots you saw fired from the barracks from your window was from C Company barracks, was it?—A. From C barracks, right here; yes, sir.

Q. How many shots did you see fired from your window from C Company barracks?—A. I only saw just one or two.

Q. How long after the firing commenced, the first firing you heard, was it until you saw that firing there?—A. It was after the men got uptown.

Q. How long after the first firing was it that you saw from Judge Parks's window the firing from B barracks?—A. The same time. I just stepped in the other room.

Q. How many shots did you see, you say, from B barracks?—A. I saw about five or six.

Q. Not more than that?—A. Well, I think about five or six; might have been more or less.

Q. Well, could you see which direction this firing was—what direction they were shooting from B barracks—while you were at Judge Parks's window?—A. I could see they were shooting toward the town, but toward what building I don't know.

Q. Were they shooting in your direction, or to the right or left of you?—A. The ones that I saw were shooting to the left of me, to the best of my knowledge.

Q. That's toward which part of town?—A. That's toward a few buildings east of the hotel.

Q. That's the only ones you saw fired toward the town?—A. Yes, sir.

Q. Now, I thought you said you saw some men moving around in the barracks there.—A. Yes, sir; I did.

Q. When was this with respect to the first shooting that roused you; how long after that, after the men had gone uptown?—A. Yes; after the men had gone uptown.

Q. What window were you at when you saw that?—A. I was in Judge Parks's.

Q. And at what barracks was it you saw this?—A. I saw it in B Company's.

Q. And where were they moving around?—A. On the inside of the barracks, too.

Q. You could see them inside the barracks, could you?—A. I saw one on the porch with a lantern or a light of some kind.

Q. What porch was that?—A. The porch facing toward town, the upstairs.

Q. The second-story balcony, then, of B barracks?—A. Yes, sir.

Q. How long did he stay up there with that lantern?—A. Just a few seconds.

Q. How many men do you think you saw there?—A. I only saw that one with the lantern that I could tell.

Q. Didn't I understand you to say you saw some inside the barracks?—A. In the barracks.

Q. This was about how long after the firing commenced?—A. That was when the men were uptown.

Q. Did you hear any noises at that time?—A. I heard a bugle call a little later. When the firing first started, the first shots at the barracks, I heard a bugle call.

Q. At the very first shots you heard, then, you heard a bugle call, did you?—A. Yes; then another bugle call just a few seconds later.

Q. Then any more bugle calls?—A. Then about five or ten or fifteen minutes later another bugle call.

Q. Were they all just alike?—A. No; they were different.

Q. Had you ever heard the first ones?—A. Not that I remember.

Q. Had you ever heard the last one before?—A. No, sir; not that I remember.

Q. Did you see any men moving about in any other barracks?—A. No, sir.

Q. How long did you stay at Judge Parks's window watching these

men?—A. I stayed there just a few minutes. Well, the shooting from the barracks had stopped—just lasted only a very few seconds.

Q. Where did you go to from there?—A. I stayed there in the window and I saw part of the men run back through the alley, back toward the post; then I went downstairs.

Q. Then you saw what?—A. Well, I was in Judge Parks's window, I saw about four or five negro soldiers running down the alley toward the post; that was just about the time the roll was being called.

Q. You heard the roll being called, did you?—A. I heard the noise I took to be a roll call.

Q. You are sure it was a roll call?—A. I am not sure of it, but I——

Q. Where was it?—A. It was—it sounded like just about in front of B barracks.

Q. What do you mean by in front of B barracks?—A. Between B barracks and the officers' quarters.

Q. Might it have been down on the other side of D barracks?—A. No, sir; I think not.

Q. You are sure about that?—A. I am pretty sure what I heard was in front of B barracks.

Q. What makes you so sure of that?—A. I could hear the men running down the stairs there and going over to it.

Q. Couldn't you hear the men running down D barracks? Wasn't that practically as close to you as B barracks?—A. I could not hear them going over to in front of D barracks; I heard the names or the sounds coming from in front of B barracks.

Q. You are very sure about that?—A. I am sure.

Q. Look at the barracks on the plat, and I will ask you if D barracks isn't practically as close to you as B barracks; aren't they as close together, practically?—A. Just about the same distance, or maybe just a little farther.

Q. As a matter of fact, Mr. Elkins, if a roll was being called between D barracks and the wall, couldn't you have heard it more plainly than a roll being called in front of B barracks?—A. I don't know whether I could or not.

Q. What's your best judgment?—A. But the one I heard was in front of B barracks.

Q. Did you hear any roll call in the rear of D barracks that night?—A. No, sir; I did not.

Q. You are sure about that?—A. Yes, sir; I am sure.

Q. If there had been one about that time would you have heard it?—A. Well, I think maybe I would.

Q. What's your best recollection? There's the map. What's your best judgment? Would you or would you not have heard a roll call if it had been directly back of D barracks that night and about that same time?—A. I only heard one roll call——

Q. (Same question repeated.)—A. I don't know whether I could have heard it or not. It's next to the river there.

Q. What's your best judgment now?—A. I think I would have heard it.

Q. Then you want to give the impression to this court that there was no roll call back of D company at just about the time we are talking about now?—A. I mean to say I didn't hear any. They

might have had a roll call there, but I didn't hear it. I only heard one, and that was at B barracks.

The court then took a recess until 2.10 o'clock p. m.; at which hour the members of the court, the judge-advocate, the accused, his counsel, and the reporter resumed their seats.

The witness, HERBERT ELKINS, was reminded that he was still under oath.

CROSS-EXAMINATION.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. I understood you to say before lunch that if there had been a roll call of D Company at the rear of the barracks of that company, at the time we were discussing it, that you would have heard it?—A. No, sir; I said that if there was a roll call there I didn't hear it.

Q. I thought I asked you if there had been a roll call you would have heard it?—A. It might have been possible that I could have heard it, but I didn't; I heard the roll call in front of B quarters.

Q. That is the only roll call you heard that night?—A. Yes, sir; that is the only one.

Q. Now, how long did you remain in what you called your window, looking out?—A. Till the men had passed up the street.

Q. Well, let's put it from the time you heard the first shots, how long did you remain in that window—how long would that be?—A. I didn't time it; I couldn't tell you.

Q. Give us your best judgment?—A. Well, it was somewhere about ten minutes, I suppose.

Q. You didn't go into Mr. Parks's room during that ten minutes?—A. No, sir.

Q. About how long did you remain in Mr. Parks's window when you went there?—A. I remained in there about ten minutes longer, I suppose.

Q. Then you remained in these two windows altogether about twenty minutes?—A. Somewhere about that.

Q. Did you go to any other window during this time?—A. No, sir.

Q. When did you say you heard the first bugle call with respect to the first shooting that waked you up?—A. Just as soon as the shots began.

Q. That is, the first shots that aroused you, afterwards you heard those bugle calls. Now, did that seem to be repeated at all by other bugle calls?—A. Yes, sir.

Q. There were other bugle calls?—A. No; only that bugle, but there were about three different calls from that one bugle.

Q. How far apart were they?—A. The two first were right together—only a few seconds between.

Q. And how long after that before you heard the next one?—A. About five, or ten, or fifteen minutes; somewhere along there.

Q. And where was this bugle call located—these first two that you heard that were right together—where did they seem to be sounded from?—A. About the west end of B barracks, or just inside the wall; right along there somewhere.

Q. You are quite sure that it was close to B Company barracks?—A. Yes, sir.

Q. Then it seemed to be sounded from close to where the men fired the first shots?—A. Yes, sir; very close.

Q. You are quite sure you didn't hear any other bugle calls over in any other part of the garrison?—A. No, sir; none but that one.

Q. And that you only heard two?—A. I heard two.

Q. I mean at this particular time?—A. Yes, sir; only two then.

Q. Then it was some five or ten or fifteen minutes after when you heard the next?—A. Yes, sir.

Q. Were these first two calls just alike?—A. No, sir; they were different calls.

Q. Had you ever heard either of them before?—A. Not that I know of.

Q. You lived there long enough to become more or less familiar with bugle calls, didn't you?—A. No, sir; I was there only about one month before.

Q. At that time?—A. Yes, sir.

Q. Had you been associated with soldiers before?—A. No, sir.

Q. Never had seen any soldiers before that—before you came there?—A. I had seen them, but had had very little to do with them.

Q. Where did you see them before?—A. I have seen them here.

Q. Before that?—A. Yes, sir; and at different places.

Q. Well, tell us where? I want to know how familiar you were with soldiers?—A. I have seen them here and on the march.

Q. Where?—A. I saw them marching to Austin, and I saw soldiers that marched down to this post here from up North—a long march that was made some time last winter.

Q. How were these soldiers dressed each time that you saw them—I mean aside from those at Brownsville?—A. Dressed in the khaki.

Q. Always dressed in the khaki?—A. Except in their dress suits of blue.

Q. When did you see them dressed in their blue suits?—A. On some special occasion.

Q. Whereabouts?—A. I don't remember.

Q. You don't remember where you ever saw any soldiers dressed on a special occasion in blue clothes, then?—A. Yes, sir; I remember seeing them in blue clothes, but what they were dressed for I don't know.

Q. Where?—A. I have seen them here. I have seen them in dress uniform when the President was here.

Q. When was that? Before or after the 13th of last August?—A. It was before.

Q. Now, how many times—count it up, please—have you seen soldiers before you went to Brownsville?—A. I have seen them often.

Q. Tell us how many times.—A. I couldn't tell you; I don't know myself.

Q. But you hadn't been familiar with soldiers—that is, you didn't see them from day to day, or every day, until you went to Brownsville?—A. No, sir.

Q. Did you go out in the post much while you were at Brownsville?—A. A good deal.

Q. How much—every day?—A. About two or three times a week.

Q. Where did you go when you went out there?—A. I went down by the lake.

Q. To what is called the Lagoon?—A. Yes, sir.

Q. What did you do down there?—A. The cemetery and to the ball grounds.

Q. What did you go down there for?—A. Walking around.

Q. That was a great fishing place, wasn't it?—A. I couldn't tell you; I never fished.

Q. Never saw people fishing down there?—A. I have seen a few, but never saw them catch anything.

Q. What is the last time you were in the post previous to the 13th of August last?—A. The Sunday before, I believe.

Q. That is your best recollection now?—A. Yes, sir.

Q. Where did you go that day?—A. I went to the ball grounds.

Q. Did you hear any other noises than this bugle call and that shooting you say you saw there in that barracks and this one roll call after this first firing that was heard by you?—A. I heard a wagon or some rumbling noise that sounded like a wagon.

Q. And that was also at B barracks, I think you said?—A. Yes, sir.

Q. What other noises did you hear there at all?—A. I heard a command given; I don't know what it was, though.

Q. Could you give us any idea where that came from?—A. It came from B barracks.

Q. Was it inside the barracks?—A. No; it was out in the parade grounds.

Q. It was the other side of B barracks, then?—A. Yes, sir; a few yards on the other side.

Q. You couldn't see there, could you?—A. No, sir.

Q. But you did see inside the barracks—saw men moving around inside the barracks?—A. Yes, sir.

Q. How many did you say you saw moving around inside the barracks?—A. I saw a good many—maybe fifteen or twenty, or somewhere along there.

Q. Is there any light on the corner of the alley—that is Cowen's alley—and Fourteenth street?—A. No, sir; no light there.

Q. Was there any light in the Cowen house that night?—A. None that I know of.

Q. There was none that shown in the alley?—A. No, sir.

Q. Where are the lights, with respect to that alley—what are the nearest street lights that you know of?—A. Well, on the corner of Elizabeth and Fourteenth.

Q. On Elizabeth and Fourteenth? Did that shine up that far?—A. No, sir.

Q. What kind of a light is that really, on the corner of Elizabeth and Fourteenth?—A. It is an oil lamp.

Q. How big a wick is it?—A. I don't know.

Q. Did you ever notice it?—A. No, sir.

Q. Did you ever notice the light up on the corner of Fourteenth and Washington?—A. I never have noticed the size of the wick; I have noticed lamp being there.

Q. That didn't shine down so as to show this man down there in the alley, did it?—A. No, sir.

Q. What kind of a night was it—moonlight or not?—A. Starlight night.

Q. Bright or dark?—A. Starlight; very bright. The night was not dark or not light; kind of a medium.

Q. Medium dark and medium light, do you mean to say?—A. The stars were shining, but not so very brightly.

Q. There was no moonshine?—A. No, sir; not at that time of night, I don't think.

Q. You were in the window of your room all the time that you saw these men there in the alley, were you not?—A. Yes, sir.

Q. You didn't go into Mr. Parks's room and look out of his window until after they had gone down by?—A. No, sir.

Q. How many shots did you hear after they passed Fourteenth street alley?—A. Well, about 50—25 or 50; I couldn't tell exactly how many.

Q. Twenty-five or 50. Do you remember the nature of those shots at all?—A. The nature?

Q. Yes. What kind of shots were they—how did the reports come to you?—A. They were sharp reports.

Q. They were all sharp reports, were they?—A. Yes, sir.

Q. There were no other sounds than those sharp reports, mixed up with that firing?—A. Well, about the last shots fired were fired, I think, by the police.

Q. You think the last shots fired were fired by the policemen?—A. About the last.

Q. What makes you think so?—A. I think 4 or 5 shots were fired from a common gun—they had a dull sound.

Q. Where did you locate those?—A. Those were up in the neighborhood of the Miller Hotel.

Q. You heard some dull-sounding shots up there in the neighborhood of the Miller Hotel?—A. Miller Hotel or Washington street; up there somewhere.

Q. Are you certain of this, that these sharp-sounding shots were not mixed up with those dull-sounding shots?—A. No, sir.

Q. Then these dull-sounding shots came after those others?—A. They were separate.

Q. Were they after or before?—A. They were after the largest part of the shooting.

Q. There were still some of these sharp sounds after you heard those dull heavy reports?—A. There might have been; I didn't notice it.

Q. What is your best recollection, now that you think of it?—A. I think they shot some more.

Q. After that?—A. Yes, sir.

Q. Did you hear any pistol shots?—A. None; only those dull shots I took to be pistol shots.

Q. So those just before the thing was over were the only ones you took to be pistol shots?—A. Yes, sir.

Q. There were no dull shots aside from those you spoke of mixed with the first firing?—A. Not that I could tell.

Q. Nor at any time until after those men had passed to the alley by the Leahy Hotel?—A. No, sir.

Q. How long did it take them to finish up this firing after they left the alley by the Leahy Hotel?—A. About ten minutes, I suppose.

Q. I wish you would go to that window right over there and show the court what position you were in—how you looked out.—A. (Witness goes to window and indicates that he spread his hands, putting the palms of the hands on the sill of the window, and looked out, turning his head to the left.) I was standing just this way, only my window was just about half as high as this one.

Q. That is the position you assumed during the time you were looking out of the window?—A. Part of the time.

Q. Did you change your position?—A. Part of the time I was sitting down on the bed.

Q. What part of the time were you sitting down on the bed?—A. When the shooting first began.

Q. But when you went to the window, you remained in that position?—A. Yes, sir; that was during the shooting into the Cowen house—the first shooting.

Q. Until after they went up the alley there, as I understand you?—A. No, sir; when they were shooting in front there I stepped back into the room apiece.

Q. What I want to get at is this: During the time you were there at the window looking out, you stood in that position that you showed the court there then?—A. Yes, sir.

Q. But you stepped back from the window during what time?—A. When the men were in front of my window—that is, in front of the Cowen house.

Q. Why did you step back at that time?—A. I didn't think it would be safe in the window, because I couldn't judge their movements when they were scattering so.

Q. You couldn't tell what their movements were going to be next?—A. No, sir.

Q. Let's go into Mr. Parks's room. I wish you would go up and show the court how you looked out of the window in Mr. Parks's room when you were looking out of there at the firing?—A. (Witness goes to window and indicates that he had his left arm above the elbow against the upright portion of the window and his left hand against that side of the window and his right a little distance from his body to the right, looking diagonally out of the window.) Leaning there like this. And Judge Parks was opposite me, looking out.

Q. Show us where Judge Parks was and how he stood.—A. He stood just about this way (indicating corresponding position on the opposite side of the same window).

Q. Did you remain in that position all the time you were at the window in Judge Parks's room?—A. In a position similar to that.

Q. Standing up at the window all the time that you were there?—A. Not all the time.

Q. What were you doing?—A. When the shooting at the barracks was over and the soldiers had gone back, I stepped back in the room, and Judge Parks dressed, and we went down stairs.

Q. During all the time you were looking out of the window you were in that position, were you?—A. Yes, sir; in a position similar to that.

Q. You were standing on one side and Judge Parks on the other?—A. Yes, sir.

Q. Mrs. Leahy, I believe, keeps a hotel?—A. Yes, sir.

Q. Did you see her during any part of this proceeding?—A. When

the shooting first commenced she came upstairs into a room that opened out toward Elizabeth street—it was vacant at that time.

Q. A room that opens out next to Elizabeth street?—A. I mean the room next to Elizabeth street on that end of the building upstairs. She went into that room, and she looked out from the window there.

Q. Did you see her there?—A. No, sir; but I heard her talking.

Q. Who was she talking to?—A. She was talking to Judge Parks and myself.

Q. What about?—A. About the shooting. We thought it was a fire, but she contended all the time the negroes were shooting the town up; but as soon as the negroes came up and shot in the house I knew that she was about right on it.

(Reporter reads last question.)

A. I mean she was saying the negroes were shooting the town up.

Q. How many times did she say that?—A. Three or four times, I suppose.

Q. You never saw her at all during the time you were in your own room—the ten minutes you were at your own window—before you went into Judge Parks's?—A. No, sir.

Q. Did you hear her saying anything during that time?—A. Yes, sir.

Q. What did she say then?—A. Well, she said it wasn't a fire; that the negroes were shooting, and we had better watch out or we would be hit by the bullets; and when the negroes had shot there and passed on up the street, she went across the street and brought the Cowen family over to the hotel.

Q. Did you go with her?—A. No, sir.

Q. Didn't she ask you to go with her?—A. Why, she said that she would go over there, and I told her that I would go if she would wait a minute until I could dress enough to go out on the street. I wasn't dressed, because I thought it was only a fire.

Q. Where were you when you said that to her?—A. I was in Judge Parks's room.

Q. You remember you said that one of these negroes got kind of bogged up like at that mudhole?—A. Yes, sir.

Q. And you said he got up on the sidewalk?—A. Got out where the sidewalk should be. There is no sidewalk there.

Q. Didn't you say in your direct examination that he got out on the sidewalk?—A. Yes, sir; but it is leveled off there and used for a sidewalk.

Q. Where was that?—A. That is in the alley on the side next—well, on both sides there is kind of a trail that leads down.

Q. Now, just at that time and that place you said you saw them put in some clips in their guns and one had trouble doing it?—A. Yes, sir.

Q. You had no trouble seeing these clips?—A. I didn't see them, but I heard the other one say that his gun had caught on him, and ask the other one to help him fix it. The other one stepped over and took the gun in his hands away from the man that had it at first, and put the clip in it and handed it back to him.

Q. Tell the court now just exactly what the man said. You say you heard him say his clip hung. I want the exact words, as near as you can recollect them.—A. I don't remember just the exact words

he used, but it was to the effect that his gun had hung on him, and the other man stepped over and fixed it.

Q. Did you hear him say "clip?"—A. No, sir.

Q. Well, why did you say "clip?"—A. Well, it was his clip that hung.

Q. How do you know that it was his clip that hung?—A. When he went to put it in, he couldn't get it in.

Q. Might it not have been a cartridge he was putting in?—A. They couldn't fire five bullets from one cartridge.

Q. Could you see the five bullets?—A. I heard the five reports.

Q. Could not they have put in five shots that didn't go in in a clip?—A. No, sir.

Q. You are sure about that?—A. Yes, sir.

Q. And you say that gun was so distinct that you knew it was bound to be a clip gun?—A. Yes, sir; I could see the gun plain enough to tell it was a Springfield rifle.

Q. What was there about it that enabled you to tell it was a Springfield rifle?—A. It had a knob on it that they worked it by.

Q. You could see the knob on it?—A. Yes, sir; when he fired I could.

Q. What light enabled you to see the knob?—A. When he fired, the light from the gun.

Q. The flash of the guns, eh?—A. Yes, sir.

Q. Then you must have seen what direction they fired exactly?—A. Yes, sir; he fired in the direction of the Cowen house.

Q. Was the flash between you and the man that was shooting?—A. No, sir; it was to the side of the man; it was to the right of me from the man's shoulder.

Q. The flash was to the right of you?—A. Yes, sir; he was shooting this way and I was over this way (indicating), and the light from his gun it made a very good light—from both guns together—shooting as fast as they did.

Q. They were both firing as fast as they could?—A. Yes, sir.

Q. And they were firing, as I understood you, directly into the Cowen house from across the alley?—A. They were firing toward the Cowen house.

Q. Will you go up there to the map and show the court where you were standing, and where the men were standing, and which way they were pointing their guns?—A. The men were standing just about here.

Q. And they were shooting at what?—A. They had their backs turned toward that house.

Q. And they were firing toward—— —A. And they were firing toward this way.

Q. Directly toward the Cowen house?—A. I couldn't say just what part of the Cowen house they were firing toward.

Q. But directly toward it?—A. Yes, sir.

Q. Now, then, show the court where you were.—A. I was in the second story, just about there, somewhere along there.

Q. Now, lay the line of the street—lay your pointer in the direction in which you saw these men.—A. Just about that way. (Witness lays pointer in direction in which he saw them, on the map.)

Q. Indicate the direction in which the men fired. Were they

firing back that way?—A. No, sir; not quite so much as that. About there (indicating).

Q. And how far was that from where you stood?—A. I don't know just how far it is; just across the street.

Q. Across the alley, too, wasn't it?—A. Well, they were standing about 6 feet down the alley, across the street.

Q. You said this forenoon that they were standing about where those steps under the window or door are?—A. Yes, sir; that is about 6 feet down.

Q. Now, then, you are very sure that it was by means of the flashes of the rifles that you saw and could distinguish the knob that works the breechblock of that piece, could you?—A. Yes, sir; by the flashes I could see the make-up of the gun.

Q. Well, tell the court what the make-up of that gun was? Give us the description of it. Tell how it differs from some of the other guns you have seen.—A. It wasn't a very long gun and a heavy gun—heavy-looking build, and the wood went nearly to the end, or in an inch or two of the end of the gun—I mean the end of the barrel. Instead of a hammer it had that knob on it and had a strap on it, or sling.

Q. Do you mean the gun sling?—A. Yes, sir.

Q. And you could distinguish where the wood stopped on it by the flash of the gun, could you?—A. Yes, sir.

Q. And you could see the strap?—A. I could see it; I could see the straps.

Q. I mean you could see the gun sling—the leather strap?—A. Yes, sir; and then in front of the Cowen house I could see the straps plainly without the aid of any lights whatever.

Q. You didn't have to depend on the flash of the guns to detect them?—A. No, sir.

Q. And you could do that even though you had stepped back from the window? Didn't you say you had stepped back from the window when they came down there?—A. After the bunch of them come in front of the gate, and more of them coming, I stepped back.

Q. Can you give the court an idea of the distance from your window to where you saw these men and recognized the knob on the gun—can you give it by any distance you see here? Indicate it in this room, if you can.—A. I don't think I can by the conditions here.

Q. How many steps was it?—A. It was about 30 or 40, somewhere along there.

Q. About 30 or 40 steps?—A. Yes, sir; somewhere along there, or maybe not so far.

Q. What is your best recollection?—A. I think about 30 or 35 or maybe 40. I am only guessing at it.

Q. You wouldn't place it at less than 30, would you?—A. It might be less than 30 and it might be more than 30, but I don't think it is less than 30.

Q. You said you heard a squad of negro soldiers coming in rear of these first two—the two chiefs or leaders—what did you mean to imply by that—what part of it did you hear?—A. I heard them shooting down the alley—down the alley a few shots—and then they came on up.

Q. Could you hear them walking?—A. I could hear them running; yes, sir.

Q. They were running—you heard them running?—A. Yes, sir.

Q. That particular bunch?—A. I heard them after they got close up to the corner.

Q. Now, you said that some of them—some of this bunch of 8 to 12 or 15—turned down and got directly in front of the Cowen house—in front of the gate, were they?—A. Yes, sir; just about in front of the gate.

Q. How long after they started down there that way was it before you left the window and stepped back in the room?—A. After they got there—after part of them, about 5 or 6 of them, got there.

Q. How many came down first?—A. They come in a squad as far as the corner, but some of them stopped there, and then about 5 or 6 of them went in front of the gate. I stepped back in my room a little before that, and some others came up, and I heard them come up, and they came up in a bunch to join the other 5 or 6, and then part of them stopped over toward the hotel—over next to my window—and I stepped back. Whether they went to Elizabeth street or back to the alley I don't know, but the 5 in front of the gate went up the alley.

Q. What I want to get fixed is this: Exactly where were these first 5 or 6 men that came down in front of the Cowen gate—exactly where were they when you stepped back from the window?—A. They were about the middle of the street, in front of the gate.

Q. What were they doing?—A. They were standing there like they were undecided which way to go.

Q. Do you remember which way they were facing?—A. They were facing toward Elizabeth.

Q. They were facing down toward Elizabeth street?—A. Yes, sir; they had started to Elizabeth.

Q. How long did you stand there at the window and watch them?—A. Just a few seconds.

Q. Then you stepped back?—A. Yes, sir.

Q. Then you heard some others come up?—A. I heard the others come up before I stepped back.

Q. How many others came up then?—A. Several more.

Q. What is your recollection?—A. Somewhere about 6 or 8, I suppose.

Q. So then there must have been there, directly in front of the Cowen house, some 5 or 6 and 6 or 8, and that would be at least 11, then?—A. Somewhere about that.

Q. And went up the other way or across the alley?—A. Some turned and went toward my room.

Q. In your direct evidence this morning you said that they split up when they got to Fourteenth street, some of them turned down this way and some of them followed the leaders?—A. Yes, sir; they separated up there; part come this way and part went that way, but those that came back to join the bunch that started into Elizabeth street they were the same ones.

Q. You think they must have been the same ones?—A. Yes, sir.

Q. So this 11 or 12 included all that were behind the first two leaders?—A. I think so.

Q. There was a good deal of confusion there among them while they were in front of your room?—A. Not very much confusion.

Q. I thought you said they didn't seem to know where to go?—A. They didn't seem to know where to go, but they didn't seem to be puzzled about it.

Q. They did turn back?—A. They didn't turn back until the leader, who was in the alley, called to them.

Q. What did he say, exactly?—A. He hollered to "Come this way."

Q. That is all you heard him say?—A. That is all I understood, but he said something else.

Q. What did it sound like?—A. I didn't catch it.

Q. Well, had you stepped back before this man hollered "Come this way," from the window?—A. Yes, sir.

Q. You had stepped back then?—A. Yes, sir; I had stepped back, but when I heard him holler there I stepped up to the window to see the men; all that was out where I could see them were going back toward the alley where the leader was.

Q. Then your curiosity got the better of your caution. I understood you to say you stepped back because you were uncertain what they would do?—A. Yes, sir; I did; but when they started away, going on back they were not headed toward me at all in my room; they had their backs to me.

Q. I don't understand yet where you were when you heard this man say, "Come this way." Were you at the window or back from the window?—A. I was a piece back from the window; I could still see the middle of the street, but there were soldiers under my window that I couldn't see.

Q. Could you see the men in the street?—A. Yes, sir.

Q. And you distinctly saw them turn and shoot in the Cowen house there?—A. Yes, sir; after they had moved down toward the alley a few steps.

Q. But this was after the leader said "Come this way?"—A. Yes, sir; kind of a parting shot.

Q. How many shots were in this parting shot?—A. About three, I think, would cover it.

Q. Then, after those men turned and went up there, how long after that was it before you went into Judge Parks's room?—A. After the men had turned—do you mean when the men turned to go back to the alley?

Q. Yes; after they responded to this leader, saying "Come this way," how long after that was it until you went into Judge Parks's room?—A. Immediately.

Q. You went immediately into Judge Parks's room?—A. Yes, sir. Then when I stepped into Judge Parks's room, from his window—he was standing at the window when I went in—and he called me and told me to come to his window and showed me where they were shooting.

Q. Now, I want you to show the court how these men went from the Cowen house toward the alley; you said this morning they were running when they left the front of the Cowen house in front of the Leahy Hotel there, and I want you to show the position in which they were; you said they were stooping.—A. Yes, sir; they were stooping, just about this way; holding their guns this way. (Witness indicates a stooping position.)

Q. Holding their guns in both hands?—A. Yes, sir.

Q. All of them in that position?—A. Yes, sir; about all of them; the two in the lead were in that position, and some in the back; but I don't know whether all were or not.

Q. All held their guns in both hands?—A. All in the back were stooping over, but whether they all had their guns that way I couldn't say.

Q. Do you recall seeing them in any other position?—A. No, sir.

Q. How long was it after this when you went into Judge Parks's room that you saw these men running back—you said you saw them running back down the alley?—A. It was about five or ten minutes.

Q. From five to ten minutes after that?—A. Yes, sir.

Q. Were you still in Judge Parks's room when you saw them running down the alley?—A. Yes, sir.

Q. And how many did you see go down?—A. I saw about 4 or 5.

Q. Did you see these men have guns?—A. Yes, sir.

Q. Were they the same kind of guns that those other men had—the two men that you identified?—A. Yes, sir; I took them to be the same kind of guns; they were soldiers, I could see; they were running, but not stooping over when they went back, and they carried the guns in one hand and let them sling.

Q. They held it by the sling?—A. No, sir; as they run they let their guns sling.

Q. Do you remember which hand they held it in?—A. I only remember 2 or 3 of them carried their guns that way, because they were a kind of a squad, and I could only see those toward me.

Q. Do you use that word "squad" in a technical sense, or do you mean in a bunch?—A. They were in a bunch.

Q. Did you see any men carrying their guns in any other position than what you said?—A. No, sir.

Q. How long was it after this till you saw this company?—A. Why, it was about an hour or hour and a half; it might have been a little longer.

Q. About an hour or hour and a half after, eh?—A. Yes, sir.

Q. Well, how many men were in that company when you saw it?—A. I suppose about 50 or 60.

Q. Who was this man that was guilty of using this language that you spoke of?—A. He was the same one that I took to be the leader—one of the leaders.

Q. You are sure about that, are you?—A. I am pretty sure he was the same one.

Q. How did you identify that man?—A. By the shape of his face, the color of his skin, and his size.

Q. Well, what was his size?—A. His size was about 5 feet 6 inches, or 5 feet 8 inches.

Q. And the color of his skin; what was peculiar about that?—A. It was black.

Q. I thought you said both of these leaders were black?—A. Yes, sir; but one was taller than the other.

Q. This was the shorter one?—A. Yes, sir.

Q. And what part of the company was he in when you identified him?—A. He was in the rear part of it.

Q. Did you see any other marks on him that enabled you to identify him?—A. No, sir.

Q. Can you remember his exact language?—A. Yes, sir.

Q. Did he swear?—A. Yes, sir.

Q. What was the swear word he used?—A. He said—do you want me to give the language he used?

Q. I asked you what was the profane word he used?—A. I don't know whether you would call that swearing or not, what he said.

Q. What was it?—A. It was a vulgar word.

Q. I mean nothing obscene; I just want the profanity.—A. I don't get what you are after.

Q. Don't you know what I mean by profane?—A. Yes, sir.

Q. Did he use a profane word?—A. Yes, sir.

Q. What was it?—A. It was—he said he would kill the rest of the—I can't well tell it without putting it in——

Q. You can omit any part that was vulgar.—A. It is all vulgar.

Q. All the rest is vulgar?—A. Yes, sir.

The court:

The judge-advocate can announce that this answer will be vulgar and those not desiring to hear it may leave the room.

The judge-advocate:

By direction of the court I announce that the answer of this witness to this question may shock some that are in the court and they can leave the court room if they desire.

The court:

Now, give the exact words.

A. He said: "We will come back to-morrow and kill the rest of the God damn son-of-a-bitches."

Q. You are sure he said that?—A. Yes, sir.

Q. And those are his exact words?—A. Yes, sir; that is his exact words. Mrs. Leahy was there and heard it.

Q. How close were you to them at this time?—A. You mean the company that the men were in?

Q. Yes.—A. About 5 or 6 feet; he was standing just off the sidewalk.

Q. And how far from the light on the corner?—A. About 60 feet—not so far as 60 feet; about 40 feet.

Q. About 40 feet from the light?—A. Yes, sir; I think so.

Q. Did you recognize any mud on his clothes or his feet?—A. No, sir; he was standing in the company, a good many men ahead of him.

Q. You didn't recognize him by the mud on his person, then?—A. I couldn't see the lower part of him.

Q. How far was this man from the rear of the company—that is, that part of the company farthest from the gate?—A. He was just about the second man from the last.

Q. Did you notice the man that was exactly in the rear—the last man in the company?—A. I didn't pay any special attention to him.

Q. I think you said you testified before Mr. Purdy?—A. Yes, sir.

Q. And you looked it over, you said, and signed it and swore to it before Mr. Kowalski?—A. Yes, sir.

Q. "Q. After you left Judge Parks's room, where did you go?—A. I went back to my room. Mrs. Leahy was in the window upstairs and didn't know what was up or anything about it; she called and wanted to go over and get the Cowen family. Mrs. Cowen came to

the gate and screamed, and we told her to wait until we could dress a little and we would come over. She went over herself, and we were downstairs when she came back, which was in a minute or two." What do you mean by saying she didn't know anything about it?—A. She didn't know what was the shooting until they got there and she saw them shooting at the house.

Q. This was after that?—A. After that, when she went over—she went down the street when the shooting was taking place, and by me stepping back into my room—when I went into Judge Parks's room I wasn't dressed, and I stepped back into my room and stepped right back out when I got my clothes.

Q. You were in your room first for ten minutes?—A. Yes, sir.

Q. Then you were in Judge Parks's room for ten minutes; then you went back to your own room and dressed?—A. I just stepped right in and drew on a pair of linen breeches.

Q. You did step back to your room to draw on the pair of linen breeches, and it must have been twenty minutes after this thing commenced—it was certainly after all these men passed by?—A. I dressed after the men passed on back to the post.

Q. So that it was after that when you stepped into Mrs. Leahy's room, as you testified here?—A. I didn't go in Mrs. Leahy's room.

Q. This was after you left Judge Parks's room. It says, "Q. After you left Judge Parks's room where did you go?—A. I went back to my room. Mrs. Leahy was in the window upstairs, and didn't know what was up, or anything about it." Now, that was twenty minutes after this thing commenced. It must have been from the statement you make here.—A. That was before the shooting.

Q. You didn't tell Mr. Purdy so?—A. You will notice in there that a whole lot of that evidence that came at the last was really what happens at the first.

Q. I can't read it so from the text, but we will take it up a little more in order. "Q. How many shots did you hear fired?—A. It seemed to me like it was ten or fifteen, maybe more, right there about the wall or barracks. Q. Were you in bed at the time?—A. Yes, sir; but I raised up as soon as I heard the reports; then I got up and sat in the window—in my window."—A. Yes, sir.

Q. Is that true?—A. I sat on the bed in the window. The window is low, and the bed is only a few inches lower than the window.

Q. Then you were mistaken when you told Judge Purdy under oath, and signed it and swore to it, that you got up and sat in your window?—A. I was in the window. I was sitting on the bed with my arms in the window that way. Part of the time I was sitting in the window. I didn't sit in one position all the time.

Q. You stated to this court that you did all the time that you were at the window?—A. I said I stayed in similar positions; part of the time I was leaning up in the window, and part of the time standing.

Q. Could you distinguish light blue from dark blue that night in the alley while you were standing in your window?—A. I don't think I could distinguish that; but I could distinguish blue from black though, I think.

Q. Now, You said in your evidence to Mr. Purdy, as follows: "Q. How were they dressed, and what did they have in their

hands, if anything?—A. Both of them had guns—rifles—and they were dressed in yellow khaki pants, and one of them had on this light-colored army shirt—light blue—and I think the other one had on a coat. I am not sure."—A. Yes, sir; one was dressed in a light-blue shirt—that is, not like the navy-blue uniform.

Q. You could distinguish that while they were still over in the alley?—A. Yes, sir; he had it unbuttoned in the front.

Q. Could you see the color of his skin through it?—A. No, sir; he had on underclothes.

Q. What color were they?—A. White, I believe.

Q. Do you know?—A. I didn't pay any attention to them.

Q. You could hear the voices of those men distinct when they were in the alley, couldn't you?—A. Yes, sir.

Q. Did you recognize them by their voices as being negroes?—A. Yes, sir.

Q. Well, what kind of a voice was it? Tell the court what enabled you to distinguish them as being negroes.—A. It wasn't a very coarse voice, but kind of a long voice; I can't describe the difference.

Q. You can't describe the difference?—A. No, sir; kind of a long, whining voice—not so long, but longer than a white man's—do not speak so clearly.

Q. You don't know at any time that they fired at the Miller Hotel, do you—directly at the Miller Hotel?—A. No, sir; there was two shots fired into the back part of my room, but I don't know where they were fired from.

Q. In the back part of your room?—A. I mean on the back wall of my room.

Q. Where is the back wall of your room?—A. It faces on the alley.

Q. Whereabouts on the wall were they fired?—A. They were fired just about a foot and a half—one of them—above the floor, and the other one was a foot and half, I reckon, above that, a little to one side. I can't locate them just exactly. They knocked out a hole in the brick—both of them—and fell down to the ground, and the cook picked them up next morning, so she said; I didn't see them.

Q. Where were they fired from?—A. I don't know.

Q. You didn't examine the direction from which they came?—A. I think they must have been stray shots, or something, fired from another part of the town. They were fired straight, though.

Q. I want to read you a little of your evidence in this connection: "Q. Did you hear firing after that?—A. After that shot at the corner they went toward the Miller Hotel and they fired 6 or 8 shots there. Q. Were you still in the window?—A. Yes, sir; I was then in Judge Parks's window. Q. Was he in his room?—A. Yes, sir; he doesn't see very well, though, and he couldn't tell whether they were negroes or whites, but he could hear their voices, and he said they were negroes. Q. You were in Judge Parks's room at this time?—A. Yes, sir; up to the time I went in Judge Parks's room I thought it was a fire down at the post, but when I saw them shooting at the Cowen house I knew different. Q. When you saw them shooting at the Cowen house, in whose room were you?—A. In mine." So you must have seen them shooting in the Cowen house after you went in Judge Parks's room?—A. No, sir;

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I saw them from my window before I went in Parks's room. I didn't go in his room until after the soldiers had passed up the street—up the alley.

Q. In the first part of your testimony: "Q. Were you in bed at the time?—A. Yes, sir; but I raised up as soon as I heard the reports; then I got up and sat in the window—in my window. Q. Which way did it face?—A. It faced the post. Q. Could you see the post from your window?—A. No, sir. Q. Could you see any portion of it?—A. I could see the roofs of the quarters." Did you so testify, or not?—A. Yes, sir; I could see a small portion, I believe, of C barracks.

Q. Did you so testify before Mr. Purdy and Major Blocksom?—A. Read that over again, please.

Q. "Q. Which way did it face?—A. It faced the post. Q. Could you see the post from your window?—A. No, sir. Q. Could you see any portion of it?—A. I could see the roofs of the quarters."—A. Yes, sir.

Q. You so testified?—A. Yes, sir.

Q. Who was at the head of that company?—A. Why, I didn't see.

Q. Who was in command of it?—A. I didn't see anybody—any white man with the company, though he must have been there. Doctor Combe and, I think, Doctor Combe's brother—I didn't know either one at the time—but Doctor Combe stopped there at the gate and talked to us a few minutes. Then he went up to the head of the company.

Q. Never mind that. What I wanted to know was, did you know who was in command of that company then?—A. No, sir.

Q. Then, why did you testify this morning that it was Captain Lyon's company?—A. I didn't testify it was his company—only from hearsay.

Q. You were testifying hearsay, then, this morning on your direct examination so far as that is concerned?—A. Captain Lyon's company, so it is said. I didn't see a white man with it.

Q. "Q. Did you see those men at any time later in the evening?—A. I saw in the company that Captain Lyon took out that night, etc." So that you don't know whether that was Captain Lyon's company or not?—A. Only what Doctor Combe said that night. We asked whose company it was and he said Lyon's. As far as me seeing him myself, I did not; but I took his word for it.

Q. Were you asked this question: "Q. You don't know who the officer was in charge of that squad, or who he was talking to?—A. No; he was talking to some one. Q. He had his squad at halt?—A. Yes, sir." Referring to this same squad, you didn't know who it was at that time?—A. No, sir. When he was talking in front of his company Doctor Combe was talking to us.

Q. But this testimony was given to Mr. Purdy in January, wasn't it?—A. It was after Christmas.

Q. No; it was about the 27th of December?—A. Yes, sir.

QUESTIONS BY ASSOCIATE COUNSEL FOR THE ACCUSED.

Q. What time did this firing occur on August 13?—A. About 5 till 12.

Q. How do you know that?—A. By the watch.

Q. Did you look at your watch?—A. Yes, sir.

Q. Did you testify this morning that you didn't look at your watch?—A. I looked at my watch after I went downstairs. It was only about twenty or thirty minutes later, and, besides, Mrs. Leahy looked at her clock.

Q. What time was it when you looked at your watch?—A. It was after 12.

Q. What time?—A. About twenty-five minutes after, I think. I don't remember exactly.

Q. How do you know it was five minutes to 12 when the firing occurred?—A. Because Mrs. Leahy looked at her clock.

Q. Mrs. Leahy told you so, you mean?—A. She told me, and besides I had my watch hanging there, and I noticed it when I went down, and I knew it was in the neighborhood of five to 12.

Q. What time did it show?—A. It showed about 12.25.

Q. How do you know it was five minutes to 12 when the firing occurred?—A. I knew it was somewhere a little before 12. I got back about fifteen minutes to 12, and I hadn't been in my room only a few minutes when the shooting occurred.

Q. How do you know you got back about fifteen minutes to 12?—A. I looked at my watch.

Q. Didn't you testify this morning that you knew it was twenty minutes to 12 because you came in about twenty minutes to 12, and didn't you fix your time with respect to the firing?—A. I got back about twenty till 12 that night.

Q. Did you not testify this morning that you fixed the time of your return to the hotel by knowing it was 12 o'clock when the firing began and that you had returned about twenty minutes previous to that time?—A. I don't understand what you are trying to get at.

Q. When asked this morning, in substance, what time you returned to the hotel after taking these children to their respective houses, you said it was about twenty minutes to 12?—A. Yes, sir.

Q. In explanation of that you said that it was about twenty minutes before the firing began, that you knew the time was about twenty minutes to 12 because it was about twenty minutes before the firing began and the firing began at 12?—A. The firing began a few minutes before 12.

Q. Is that a correct explanation?—A. In a very few minutes; I can't tell exactly.

Q. Did you look at your watch when you returned to the hotel?—A. Yes, sir.

Q. What time did it show?—A. It showed twenty minutes to 12.

Q. Do you remember what time it did show?—A. Yes, sir; I always have to work on time, and I looked at my watch.

Q. What time did it show?—A. It showed, to the best of my memory, twenty minutes to 12.

Q. Do you remember?—A. I am not sure just what time—I didn't pay any special attention to it.

Q. You do not know, then, that it showed twenty minutes to 12?—A. To the best of my recollection it did.

Q. Might it have shown fifteen minutes to 12?—A. I don't think it did.

Q. What room was Mrs. Leahy in in her house that night?—A. Do you mean the room she sleeps in or the room she was in upstairs?

Q. The room upstairs.—A. She was in this room right here (indicating on picture in evidence marked "B," room No. 3).

Q. Which room were you in?—A. Right here (indicating on same picture room No. 1, nearest the alley).

Q. And which room was Judge Parks in?—A. Right here (indicating on same picture room No. 2).

Q. Can you see the post from your room that you occupied in the Leahy Hotel?—A. I could see about 5 or 6 feet of the upper story of, I believe, C barracks.

Q. Five or 6 feet of the upper story?—A. Yes, sir.

Q. Will you just point that out here on the map?—A. (Witness goes to map on wall.) I believe it is this barrack (pointing to C barracks).

Q. Then I understand that you could see the upper part of the barracks on the porch, 5 or 6 feet, from your room in the Leahy Hotel?—A. Yes, sir.

Q. Where is your room in the Leahy Hotel?—A. Right here (indicating on map).

Q. Now, will you point from that room over to the barracks to the point you could see?—A. (Witness indicates with pointer line from his room to porch of C barracks.)

Q. Then this house didn't obstruct your vision?—A. Not from the second story; no, sir.

Q. Then this map is incorrect in that particular?—A. I won't say which one of the barracks it is, because I never looked for myself. Between the houses I could see the end of one of the barracks. I know it is B Company's that I could see from Judge Parks's room.

Q. It is not B barracks that you could see from your room?—A. No, sir; it must be the corner of this one (indicating).

Q. Then that map is incorrect in that particular, is it, in that that house doesn't obstruct your vision?

The judge-advocate:

May it please the court, I would like to take the part of my poor old map. The house is a one-story house and the hotel is a two-story building, and he could probably look over the roof of the house.

Q. The question I asked was, Does that house, occupied by Mr. Cowen, obstruct your vision of the post from your room in the Leahy Hotel?—A. It obstructs part of it and nearly all of it, if not all—I don't think it obstructs all of it. I know I can see the end of one barrack from my window.

Q. Then, as far as the side direction goes, if the map shows that it obstructs your vision, then that map is incorrect?—A. I could see the top of the barrack roof over the Cowen house.

Q. As far as the side direction goes, if that map shows that the Cowen house obstructs your vision from your room, that map is incorrect?—A. I think the map is correct.

Q. You won't answer the question directly?—A. I believe the map is correct; I believe I can see the end of the barracks from my window; I don't know which one it is.

Q. You didn't find it necessary to explain in your previous testimony that you could see any portion of the barracks of the post from your room, did you, when you testified to Mr. Purdy and Major

Blocksom?—A. Mr. Purdy said that he didn't care anything about that; all he wanted to prove was that if the negroes did the shooting.

Q. He wanted to prove that?—A. Yes, sir; anything of that kind he said he didn't want to know; the court-martial will find that out.

Q. Then Mr. Purdy told you he wanted to find out whether the negroes did the shooting?—A. That is what Major Blocksom told me.

Q. But did you testify to Major Blocksom that you couldn't see the post from your window?—A. That I could not see the grounds.

Q. You answer the question this way: "Could you see the post from your window?—A. No, sir. Q. Could you see any portion of it?—A. I could see the roofs of the quarters."—A. I could see roofs, then a little of one barracks.

Q. In what position is Mrs. Leahy's room with respect to Judge Parks's room and the Cowen house?—A. What position?

Q. Yes. Is her room nearer Elizabeth street or—— A. It is nearer Elizabeth street.

Q. What position does his window occupy with respect to the Cowen house?—A. Just nearly in front of the gate.

Q. Nearly in front of the gate of the Cowen house?—A. Yes, sir; a little to the left from the gate, I am pretty sure it is.

Q. What portion of the post can you see from Judge Parks's room?—A. You can see one barracks, nearly all except either end; you could not see the ends of the barracks. You could see all but a very small part of each end.

Q. What barracks was that?—A. I think it is B barracks.

Q. You couldn't see all of B barracks from Judge Parks's window?—A. No, sir.

Q. What prevented you from seeing all of it?—A. The houses on each side cut off the view of the ends.

Q. The Cowen house didn't interfere with your seeing B Company barracks from Judge Parks's room, did it?—A. I think not. Not the Cowen house; there is a two-story building—the telegraph office, I believe—right next to it.

Q. The Cowen house didn't prevent your seeing any portion of the post from Judge Parks's room?—A. No, sir; it didn't.

Q. Why does it prevent your seeing any portion of the post from your window?—A. It wasn't the Cowen house that prevented me from seeing.

Q. What house was it?—A. The house next to it, I believe.

Q. Can you show it on the picture?—A. The house next to the hotel; there is some house—I don't know just which one, but I know the ends of the barracks could not be seen.

Q. Show it on the picture.—A. Right here, these two; you could see right through to the barracks there.

Q. In whose room?—A. From Judge Parks's.

(In answer to that question the witness points to the picture which is taken from the room in the Leahy Hotel in which Mrs. Leahy stood, and says this is the view from Judge Parks's window.)

A. I said could be seen from Judge Parks's window, just about the same.

Q. Then you can get almost the same view of the post from Judge Parks's window, which is about the middle of the Cowen house—about opposite the middle of the Cowen house—as you can from Mrs.

Leahy's window, which is more to the right?—A. Mrs. Leahy could see from her window D barracks too—D and B.

Q. Please listen to that question and answer it.

(Reporter reads last question.)

A. I don't know about Mrs. Leahy's window, but I know from Judge Parks's window you can see the barracks through—you see between two buildings, and see the barracks, nearly all of the barracks except a few feet on each end.

Q. I will ask the witness to identify this picture which is already in evidence.—A. That is a picture of the Cowen house and the house next to it—the annex to the hotel.

Q. Picture as taken from where and showing a view from where?—A. Showing a view from the last window; the window Mrs. Leahy was in.

Q. If a view was taken from the window in which you were in it would represent a view to the left of the present view, would it not?—A. Yes, sir.

Q. A view as taken from the left of the present view?—A. My window would be to the left and you could not see this part of it from it. You could see the barracks across that way.

Q. The question is, if the picture was taken from your window it would represent a point of view to the left of the present point of view.—A. I think it would; yes, sir.

Q. What is this house on the left?—A. The Cowen house.

Q. And this house on the right?—A. That is the annex to the hotel.

Q. When did you first hear any firing in the post at Fort Brown?—A. I heard the first shots right at the wall there about close on to 12.

Q. And with respect to that first firing, when did you hear any firing from any of the porches of the barracks in the post?—A. After the men had passed by the alley from Fourteenth street.

Q. About what length of time?—A. I think about ten minutes, or somewhere along there.

Q. When was it with respect to the bugle calls in the post?—A. It was after the two first bugle calls and before the third.

Q. You heard then firing from the porches of barracks in the post before the third bugle call had sounded?—A. Yes, sir; I think so.

Q. And you think about how long after the first firing that you heard that night?—A. How long after the first firing?

Q. Yes.—A. I think about ten minutes.

Q. Which firing did you hear first, the firing from C Company barracks or from B Company barracks?—A. I saw one or two shots.

Q. Which?—A. I don't know which. I don't know the barracks I can see from my room, but I think it is C barracks.

Q. You think you heard the firing from C Company barracks before you heard the firing from B Company barracks. Is that correct?—A. Yes, sir; from the end; and then I went into Parks's room and saw them firing from B barracks.

Q. You saw the firing from C Company barracks in your room before you went in Judge Parks's room?—A. I saw one or two shots.

Q. Then you went into Judge Parks's room and saw the firing from B Company barracks?—A. Yes, sir.

Q. How long after this firing from C Company barracks did you hear the firing from B Company barracks—immediately after you went in the room?—A. Immediately; they were shooting before I got in there.

Q. How do you know that?—A. Judge Parks called me to the window and showed me.

Q. He showed you them firing?—A. Yes, sir; he showed me before he called me in there from my room.

Q. He showed you before he called you from your room?—A. I said he called me in and showed me.

Q. I say did he show you before he called you in from your room?—A. No, sir.

Q. Then how do you know there was any firing from those barracks before you went in there?—A. Because he saw them.

Q. How did you know?—A. He had seen the shooting and called me to show it to me.

Q. Do you understand your testimony? You state in answer to a question that you knew there was firing from B Company barracks before you left your room.—A. I know it because Judge Parks told me so.

Q. That is the only way you knew it?—A. That is the only way I knew it until I went and saw for myself.

Q. You stated that you later ran downstairs and heard a roll being called. Now, when was this roll being called?—A. I heard the roll being called before I went downstairs; then it was being called when I got downstairs.

Q. Where were you when it was being called?—A. In Judge Parks's room.

Q. When was that roll being called with respect to the firing from B Company barracks?—A. It was after.

Q. How long after?—A. About fifteen minutes.

Q. Then it was about fifteen minutes after the bugle call?—A. About fifteen or twenty minutes.

Q. About fifteen or twenty minutes after the bugle call you heard that roll being called?—A. Yes, sir.

Q. You stated that you can identify those rifles that you saw those two men armed with that were firing into the Cowen house?—A. I can identify their size and their length, but their general make-up I couldn't, because I am not familiar with any kind of rifles made on that order. All I know about the rifles is they were not very long; the wood pieces came near to the end; they had knobs on them, and they had the shoulder straps.

Q. What do you mean by shoulder straps?—A. The straps that are fastened on the guns to carry them by.

Q. What kind of a strap was it?—A. A web strap—either web or leather, but which one I don't know.

Q. You said you saw a knob on these guns?—A. Yes, sir.

Q. What side of the gun is that on?—A. That knob is on the top and bends down to the side.

Q. On the top?—A. On the top or on the side, either one.

Q. Which side—the side nearest to you?—A. The side to the left. The knob was on top when I saw it.

Q. You only saw it when it was on top?—A. Yes, sir.

Q. I think you said you recognized this knob from the light that flashed from the guns as they were being fired?—A. Yes, sir.

Q. And then the knob was on top of the gun?—A. The men were shooting them.

Q. Then you recognized one knob as the other man was firing, is that true?—A. Yes, sir.

Q. When did you recognize the knob on the second rifle?—A. I didn't recognize that.

Q. You only saw one knob?—A. I could see in the dark the outline of it—the bulk of it. It wasn't a very dark night; I could see plainly what kind of guns they were using.

Q. What enabled you to see what kind of guns they were using—was it the natural light of the night or the flashes that came from the guns?—A. The flashes from the guns, how I recognized the guns.

Q. How did you recognize the guns?—A. By the light.

Q. What light?—A. By the light of the men's guns.

Q. Now, you say you recognized one man's gun while the other man was firing?—A. Yes, sir.

Q. How did you recognize the second man's?—A. I didn't recognize it; I could recognize the bulk of the gun as being like the other man's gun.

Q. What was there about this second man's gun that prevented it from being any one of ten different guns, as far as you knew that night?—A. It might have been any kind of a gun on that order, that I know; I don't know what kind it was, but I know it was made on the style of the new Springfield or the Krag; I know it was made that way.

Q. From the fact that you saw its bulk and from the fact that you saw wood running partly or nearly out to the end of the barrel, and from the fact that the flash lighted up the other so you could see a knob on top of this second gun from the time a flash occurred from the first; is that correct?—A. Yes, sir; I could tell that the guns were different in the night; I could tell they were different from Winchesters or any other kind of gun except an army gun or high-velocity sporting gun.

Q. You were able to do this all by that flash?—A. Not altogether by the flash; but the flash helped out.

Q. What else helped out?—A. The lightness of the night.

Q. The light of the stars?—A. Yes, sir.

Q. Is that true—the light of the stars?—A. The light of the night, whether it was stars or not.

Q. What other light was there that night except stars?—A. It was starlight, but it wasn't very dark.

Q. What other light was there that night except the stars?—A. There was no other light, except the light from the rifles.

Q. You testified to-day that you thought you recognized one of the negroes that you claimed was doing some shooting later when he appeared in Captain Lyon's company?—A. Yes, sir.

Q. Then you were able to recognize him by his color?—A. By his color and by his form.

Q. And you say his color was black?—A. Yes, sir.

Q. That was a distinguishing mark with respect to the other men in that company, was it?—A. No, sir.

Q. And his form was?—A. His form was very erect; well built, but not heavy.

Q. And that served to distinguish him from the other men of that company?—A. Yes, sir; somewhat.

Q. You testified also that he made use of certain language; when you testified before, did you state that that man had used that same language?—A. Yes, sir.

Q. Your recorded testimony does not bear out that answer.

The judge-advocate:

I would like to have it read to the court.

Q. It differs in this particular: You said "damn" before; to-day you said "God damn." In other words, to-day you think that this man made use of a little stronger language than you thought he made use of on December 27?—A. He used the language as I gave it to-day. That language there, if it is that way, I wasn't asked to give it like I heard it.

Q. What were you asked to do?—A. I was asked to tell it myself; to describe how he said it and what he said in the words he said.

Q. Then because you were asked to describe it your way you believed it was necessary for you not to use the words that he actually did use?—A. Any words in an oath would convey the idea.

Q. Is not your memory of this entire thing stronger to-day than it was on the 27th day of December last?—A. No, sir.

Q. Is it as strong?—A. Yes, sir.

Q. Is it stronger than it was on the 14th of August?—A. It is as strong; yes, sir.

Q. How long ago is it since this matter occurred?—A. It is about seven months, I suppose.

Q. Has your memory been refreshed on any of these particulars within the last seven months?—A. I have talked about it some, but not very much. I have heard talking about it, and when I see anything like that I remember it well enough.

Q. Is your memory any stronger just after that event occurred than it is in seven months after?—A. It is owing to the event.

Q. An important event of that kind?—A. One of that kind; time don't have much effect on it.

Q. Even on the details?—A. The details; no, sir.

Q. Doesn't affect the details; a seven months' lapse of time doesn't affect the details?—A. Not those special details I paid special note of.

Q. And you did pay special note to those details?—A. All that I have told you about. There is lots of them I didn't.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. Did you tell this to the Citizens' Committee at all?—A. I testified before the Citizens' Committee.

Q. The next day?—A. Yes, sir; the next day.

Q. Whereabouts did you testify before the Citizens' Committee; where were they?—A. In Judge Wells's office.

The court then took a recess until 4 o'clock p. m., at which hour the members of the court, the judge-advocate, the accused, his counsel, and the reporter resumed their seats.

QUESTIONS BY ASSOCIATE COUNSEL FOR THE ACCUSED.

Q. Mr. Elkins, to illustrate that question as to whether or not your memory is at present better than it was on the 14th of August, I want to read your testimony before the Citizens' Committee.—A. I read over that evidence myself, and there is some things that were not put down correctly. The stenographer was not good, and, besides, in that Citizens' Committee I only gave a very short story of it.

Q. "You know the object of this meeting; you knew that this outrage was committed by negro soldiers; we want any information that will lead to a description of whoever did it?—A. About fifteen minutes before the shooting come up I went up to my room in the Leahy Hotel, second story back. When this shooting commenced I got up and sat in the window; they came up the street, 2 of them seemed to be in the lead. There were 5 or 6; I could swear they were negro soldiers. They emptied their guns into Mr. Cowen's house, and then split up, and part of them went up Elizabeth street, one of them got into a mudhole and hollered for the others to go around the other way. They wore khaki pants, regulation blue shirts and belts. The 2 in advance were small black negroes, none of them over 5 feet 6. I might recognize the face of the one that got in the mudhole and I think I could recognize it, but maybe I could not pick him out. They didn't turn back when the bugle call sounded; they went on, and in a little while they came back. I saw them shoot into Mr. Cowen's house once, and I think they shot into it three times. They got back to the barracks before the roll call and I think before the squad went out in town. When the squad went back I was standing with Mrs. Leahy at the front gate, and the squad passed within a few feet of us. One little black negro whom I took to be the same one that got in the mudhole when they were shooting into Mr. Cowen's house said 'We will kill the rest of the —— —— —— to-morrow.' I heard the policemen shoot up town; could tell it because the shots were dull."

QUESTIONS BY THE COURT.

Q. As to this man in the company that made the profane remark and whom you thought was a leader in the shooting, did he have men to the right and left of him when in ranks, or was he a little to one side of the main body of the company?—A. He was in the middle but the men were not in line. They were mixed up more like a mob than they were soldiers. They came down the street just in front of the hotel and a little up the street from the entrance into the yard of the hotel. The tree is right off the sidewalk, and the soldiers came down that way out in the street. The soldiers in the lead went around the tree, and those in the back part started to get on the sidewalk and not go around the tree, but when the men in the lead went around the tree and these others starting to go around on the sidewalk, kind of threw them apart. Then these others went around the tree like the first did, but when they got around there they got up on the sidewalk, but the front part of the company didn't. Part of them got on the sidewalk—not all of them—one or two men went around in a row, and they were kind of mixed up and were not in line at all.

Q. When you then saw him at short distance, did you then notice any distinguishing feature or mark of any kind whereby he may now be identified?—A. I did not.

Q. Could you mark his position in the company with reference to any other man who may be distinguished?—A. No, sir.

(The witness was then excused.)

LEONARDA SANCHEZ, a witness for the prosecution, was duly sworn through an interpreter, and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please give your name.—A. Leonarda Sanchez.

Q. And your residence?—A. Brownsville.

Q. Where were you living on August 13, 1906?—A. The street of Martin Gonzales; I don't know the name of the street.

Q. Were you living in the neighborhood of Fort Brown?—A. Yes, sir.

Q. Did you hear anything unusual happen upon the night of August 13, 1906?—A. Si, señor.

The court:

Ask her if she understands English.

(The interpreter asked the witness if she understood English and she answered.)

A. No, sir.

(The question was repeated by the interpreter.)

A. She said she heard something the negro said in the house of the negro woman she lived with.

Q. Ask her if anything out of the ordinary occurred on the night of August 13.—A. She said she only heard a negro man tell a negro woman in her house not to have any fear that night, there was going to be some shots in the town.

Q. Who was this negro that made this remark?—A. A negro that worked at the house of Lieutenant Grier.

Q. Was he a soldier?—A. Yes, sir.

Q. What time a day was this?—A. About 4 o'clock in the evening.

Q. Later on during the night, did you hear anything unusual?

(The reporter here read the foregoing testimony of this witness at request of counsel for the accused.)

A. She says when the shots were fired she and the negro went inside the quarters—inside the barracks.

Q. Do you mean actually inside the barracks or inside the reservation?—A. I went inside the barracks—the house of a negro woman who lived in there.

Q. Why did you go inside the barracks when you heard these shots?—A. Because she worked with the negro woman, and went with her.

Q. What company did this soldier belong to, if you know?—A. To the company on this side (she points). I don't know what company it is.

Q. As you go into the reservation from the back gate, is this company on the right or the left of the walk?—A. The left hand.

Q. Counting from the river, is this the first, second, or third barracks?—A. Not the first on the edge of the river, but the second.

Q. What was the name of this soldier?—A. I don't know his name.

Q. Have you ever worked for any officer?—A. No, sir.

CROSS-EXAMINATION.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. Ask her how she makes a living.—A. Washing.

Q. For whom?—A. For the soldiers.

Q. How does she gain a living now?—A. I am washing clothes for the soldiers here.

Q. When did she leave Brownsville?—A. Been here four months.

Q. Is she married?—A. No, sir.

Q. Ever been married?—A. No, sir.

Q. What is the name of this woman that was with you that night?—A. Miss Johnson.

Q. Is she married?—A. Yes, sir.

Q. Who is her husband?—A. A soldier of color.

Q. What is his name?—A. I don't know his name.

Q. Where was he that night?—A. He wasn't in Brownsville; he was in Austin.

Q. What was he doing in Austin?—A. She says she don't know, because the woman said her husband had stayed in Austin.

Q. Where did they two actually go when they went into the garrison that night?—A. I stopped in the house of a negro woman for a little while.

Q. How long did they stay there?—A. Half an hour.

Q. Then where did they go?—A. To the house of the guard.

Q. Where did they go from there?—A. To the hospital.

Q. When she said she went to the calaboose, did she mean in the post or in the town?—A. In the post.

The court:

Ask her if she means the post guardhouse.

A. Yes, sir.

Q. Ask her if the guard was there in this same house that she calls the calaboose.—A. Yes, sir.

Q. Did she talk to any members of the guard?—A. She had nothing to say to the men that were there. The other woman talked to them.

Q. What did she say?—A. Said she wanted to wait there in the guardhouse.

Q. Why?—A. Because she was afraid to wait in the town.

Q. Had either of them been drinking?—A. The negro had been drinking.

Q. Was she drunk or sober?—A. She says she doesn't know whether she was drunk.

Q. Was she fully dressed?—A. Yes, sir.

Q. And both women were fully dressed?—A. Yes, sir.

Q. Ask her to describe this man that she said come to her house from Lieutenant Grier's.—A. I don't know what class of man he was; a thin man.

Q. Was this man working for Lieutenant Grier?—A. Yes, sir.

Q. How does she know it was 4 o'clock?—A. Because she had her clock.

Q. What was she doing when he told her this?—A. She was doing her work in the house—ironing.

Q. Where was the other woman?—A. She was washing.

Q. Where was she?—A. In my house.

Q. Tell her to tell us what that woman's name was again.—A. Miss Johnson.

Q. Well, could she identify this soldier that come in and told her this?—A. She said she knew she would know him.

Q. She knows that he was working for Lieutenant Grier?—A. Yes, sir.

Q. Was he talking to this other woman in English?—A. Yes, sir.

Q. And you heard what he said?—A. Yes, sir.

Q. Then, tell us what he said in English, just as he said it.—A. She says she can't say it because she can't talk English. She understands English, but can't talk it. She says you can't make me talk English because I can't talk it.

(The remainder of the examination was conducted by counsel for the accused asking the witness in English the questions and the interpreter translating the answers from Spanish.)

Q. Did you tell this to anybody?—A. No, sir.

Q. Did you tell it to anybody at the time?—A. No, sir.

Q. Where is your house?—A. Where she lives here or in Brownsville?

Q. Where did you live in Brownsville?—A. On the street of Martin Gonzales.

Q. Is that close to the garrison?—A. I don't know what the name of the street is.

Q. Is your house close to the garrison of Fort Brown?—A. I don't know what street it is on.

Q. How long had you lived there?—A. Four months.

Q. Was your house close to where the enlisted men lived in the garrison?—A. I don't know what street it is.

Q. How many streets was your house from the Rio Grande River?—A. Six blocks.

Q. How far was it from the barracks—the last barracks from the river?—A. I don't know how far it is.

The judge-advocate:

I would like to have these questions translated. I don't think she is understanding more than half the counsel said.

Counsel for the accused:

That is what we are trying to find out, if she could understand what he said that night.

Q. Were you living anywhere near Fifteenth street?—A. She wants you to talk in Spanish; you have an interpreter to translate it.

A member:

I would like to know whether she has understood the last few questions by the counsel.

(The interpreter asks witness if she has understood the last few questions and she answered:)

A. No.

Another member:

Understanding the trend of these questions, that they are for the purpose of ascertaining whether or not the witness could understand words she had claimed to have heard in English, it is suggested that in order to save time and if there is no objection you could state in English what you assume she may have heard and see if she understands it and ask the question.

Counsel for the accused:

Upon reflection, I think I shall have to decline to do that. My object in asking these questions this way, and if the court please, you will notice I was very particular in my articulation—and I want to say here that I am especially gifted in articulation, and I know this because a great many stenographers have so told me—and my sole purpose in asking these questions was simply to let the court ascertain whether or not this woman did hear what she claims to have heard in English. Now, if you will recall, once or twice she was asked if she could speak English and she said no, but she could understand it. And she subsequently stated in conversation with the interpreter, "I will not speak in English, although I understand it." Now, I don't understand all the Spanish that was spoken, but I do understand some, and there is absolutely no question in my mind that she said that more than once: and if the woman heard that or heard it at the time she said, and she is certainly very accurate in her statement as to time, and she had a watch, then I certainly have the right to test her in that way and I don't think it would be quite fair to repeat what she said.

A member:

I would like to have the stenographer read the last four or five questions of the counsel and the replies thereto.

(The reporter read as requested.)

The judge-advocate:

I wish to state to the court that this witness believes she is being ridiculed and her feelings are hurt, and she says she didn't come here to be made the laughing stock of by anyone.

The presiding officer:

If there is no objection, the interpreter can explain to her in Spanish that these questions are simply to find out how much English she understands.

(The same being explained to the witness by the interpreter,)

(The examination continues by counsel asking questions in English and the answers being interpreted.)

Q. How long did you remain at the guardhouse that night?—A. Half an hour.

Q. Who did you talk with?—A. To a negro man that was there from the house of the guard.

Q. How long did you talk to him?—A. I didn't talk with him; the negro woman talked to him.

Q. What were they talking about all this time?—A. Said she wanted to remain there because she was afraid.

Q. Whereabouts on the guardhouse was this—on the front porch, or where?—A. In front.

Q. Did you go inside of the guardhouse or speak to any other men or see any other men besides that one?—A. Only she and the negro woman went inside.

Q. How long did you remain inside the guardhouse, and what did you do there?—A. I went out and went to the hospital.

Q. What part of the hospital did you go to, and who did you talk to?—A. With a negro woman.

Q. What part of the hospital did you go to, and who did you talk to at the hospital?—A. We went in front of the hospital, and the negro woman talked to a negro.

Q. Did she talk to any white men at the hospital at that time?—A. No, sir.

Q. Were there any white men on the porch of the hospital when you got there?—A. No, sir.

Q. How many negroes were on the porch of the hospital, and what porch was it?—A. Only the negro guard were there.

Q. Only the negro guard?—A. No, sir.

Q. How many negro guards were there in front of the hospital?—A. I only saw one.

Q. Were there any men on the front porch of the hospital while you were there?—A. No, sir.

Q. Does this porch run all around the house or only in front of the hospital?—A. In front of the hospital.

Q. Did not this colored woman at any time during your stay at the hospital talk with enlisted men besides the guard?—A. The negro woman wanted to go and talk to a cook that was in the kitchen, but they wouldn't let her go.

Q. Who wouldn't let her go and talk to the cook in the kitchen?—A. The guard at the hospital.

Q. What has become of this colored woman that went with you to the hospital?—A. She wanted to go and see that negro.

Q. Where is this colored woman that went with you to the hospital that night—where has she gone to?—A. After she come back from the hospital?

Q. What I want to know is whether you know where that woman is now that went with you to the hospital that night?—A. The negro went to another house. From the hospital the sergeant of the guard took her to the house of another negro.

Q. Where was this other house that he took this woman to—the guard?—A. Inside the barracks.

Q. What side of the barracks?—A. The last house; of the washerwoman.

Q. Do you know where this woman is living now—the one that was with you that night at the hospital?—A. What?

Q. Do you know where this woman is living now—the one that was with you at the hospital that night?—A. She lives in the same house that she lived in.

Q. Where does she live now?—A. She said she was going to Fort Ring (Reno), there where the colored troops were.

Q. Do you know if this woman is up there now?—A. She doesn't know; she said she was going up there; she worked with Lieutenant Grier.

Q. How long since you have seen this colored woman?—A. She said two or three nights after the shooting she went to her house and after that went to the barracks.

Q. How long had this woman lived in your house in Brownsville?—A. Two weeks.

Q. How many rooms were in your house?—A. She only lived in the house one day, because she went to the quarters every day.

Q. How long had she been living in your house?—A. Two weeks.

Q. How many rooms were in your house?—A. One room.

Q. No more than one?—A. No.

Q. You both lived in the same room?—A. She lived in the other room; there were two rooms.

Q. Were there more than two rooms in your house?—A. No.

Q. You just said there was one room; now you state there were two. Which is right?—A. She lives in one room and I live in the other; she didn't live with her.

The court then, at 5.05 p. m., adjourned to meet at 10 o'clock a. m. Friday, February 22, 1907.

CHAS. E. HAY, Jr.,
Captain and Judge-Advocate, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., February 22, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocate. The accused, his counsels, and the reporter were also present.

The reading of the proceedings of February 21 was dispensed with.

The judge-advocate then announced to the court that the witness on the stand yesterday afternoon had not yet arrived, and if there was no objection he would proceed with another witness in order to save time.

Counsel for accused replied that he had no objection to this method, but that he did wish to cross-examine witness of yesterday when she should arrive.

Second Lieut. GEORGE C. LAWRASON, Twenty-fifth Infantry, a witness for the prosecution, was duly sworn, and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please give your name, rank, and present station.—A. George C. Lawrason; second lieutenant, Twenty-fifth Infantry; present station, Fort Sam Houston, Tex.

Q. Is Fort Sam Houston your permanent station?—A. No, sir; Fort Reno, Okla.

Q. Do you know the accused? If so, state who he is.—A. Yes; Major Penrose, Twenty-fifth Infantry.

Q. Where were you stationed on August 13 and 14?—A. At Fort Brown, Tex.

Q. Who was in command of Fort Brown at that time?—A. Major Penrose.

Q. What was your status on August 13, 1906?—A. I was commanding Company B, Twenty-fifth Infantry.

Q. What barracks did Company B occupy?—A. The second set from the river.

Q. What companies occupied the other barracks?—A. Company D occupied the set next the river and Company C the third set from the river. The fourth set was vacant.

Q. What quarters did you occupy?—A. I do not remember the number of the quarters. It was in the second set of officers' quarters from the river.

Q. Will you point out on the map the quarters you occupied and give its number as there given?—A. In this set. No. 10 (indicating on map).

Q. Who lived in the set next door toward the river?—A. Capt. Edgar A. Macklin lived in No. 11.

Q. Did anything unusual occur on the night of August 13, 1906?—A. Yes, sir. It was on that night that the trouble took place in which enlisted men of the Twenty-fifth Infantry were accused of shooting up the town of Brownsville.

Q. About what time did this occur?—A. Shortly after 12 midnight. I am not sure of the exact time.

Q. Will you describe what you first heard?—A. I first heard a bunch of shots, followed by, I suppose, about 5 or 6; followed by another volley of 5 or 6 shots and some scattering shots.

Q. Where did this first shooting appear to be from—from the sound?—A. I could not tell. The general direction was toward the town of Brownsville.

Q. Describe the sounds of these shots, to the best of your ability.—A. They sounded like rifles.

Q. How long did the first shooting last?—A. I don't understand what you mean by the first shooting.

Q. I think you said you heard a bunch of shots first; how long did that continue?—A. Probably three seconds.

Q. Were you asleep or awake at this moment?—A. I was just waking up, sir.

Q. The sound of these shots aroused you?—A. These or previous shots.

Q. What were your first movements after being aroused?—A. My first movement was to get out of bed and dress myself hurriedly.

Q. What did you then do?—A. I then seized my pistol and hat and repaired to my company parade ground.

Q. Describe the conditions existing at the barracks when you first arrived there?—A. I found the company in great confusion. It was being formed on the company parade by one of the junior noncommissioned officers.

Q. Had the men all come from the barracks at that time?—A. No, sir; they were still coming from the barracks when I got there.

Q. Did you receive any orders from the commanding officer about this time?—A. I was ordered by Major Penrose to form my company and then post it along the wall between the post and Brownsville.

Q. Was Major Penrose upon the scene when you arrived at your company?—A. He was not at that moment on my company parade ground, but he was in the neighborhood.

Q. You saw him, did you?—A. Yes, sir.

Q. Did you hear any bugle calls about this time?—A. I heard call to arms as I was, I think, coming out of my quarters. It was repeated before I reached the company parade.

Q. Was there an assemoly sounded?—A. I do not recollect hearing assembly sound, sir.

Q. After your company had been formed in front of B Company barracks was the roll called?—A. Yes, sir.

Q. Who called it?—A. The first sergeant called it.

Q. How long after the first call to arms was it before the roll was called?—A. I should say that it was within five minutes at any rate; probably about three minutes.

Q. What report was made to you as the result of this roll call?—A. That three privates were absent.

Q. Were these men on pass?—A. No, sir; they were not.

Q. Absent without authority?—A. From such formation, yes. Everybody is supposed to be there.

Q. Did you personally make any check of the men yourself?—A. None; other than listening for each man's name as it was called by the first sergeant, for his answer. Listening for his answer.

Q. Did you or anyone present in B Company have a light at the time the roll was called?—A. Yes, sir; the first sergeant had a lantern.

Q. Did this lantern give sufficient light so you could see each man who answered?—A. I could see those in the front rank, directly in front of the first sergeant.

Q. Could or could not men answer to names other than their own without your detecting it?—A. I think not. I was familiar with the—I had heard the roll calls in this company for a good while and was familiar with each man's voice.

Q. How many men were there in the company at this time?—A. I would like to know if you mean the men present, or counting the men on guard?

Q. I mean the enlisted strength of your company at this time.—A. About 56 or 7; I do not recollect the exact number.

Q. How long had you been in command of this company?—A. Since about July 1, 1906.

Q. So within six weeks you had learned to know the voice of every man, had you?—A. I had been in command of this company off and on probably for a year, but I relieved Captain Shattuck as commanding officer of it about the 1st of July, 1906.

Q. Describe a little more fully where this roll was called; that is, with respect to the barracks and with respect to the officers' quarters.—A. It was called on the company parade ground in front of the company barracks and about 40 feet from them.

Q. On the side of the barracks toward the officers' quarters?—A. Toward the officers' quarters.

Q. Did the men of the company fall in promptly, or did they straggle in?—A. They straggled in; there was a good deal of confusion.

Q. Tell if you remember how long it was after you arrived in front of your company before the last man had taken his place in ranks.—A. I can only guess at the time. I suppose about five or six minutes.

Q. And how long was this after the first call to arms?—A. I suppose about eight minutes.

Q. And approximately about how long after the first shots you

heard?—A. In the neighborhood of eight or nine minutes I should say, sir.

Q. Were you completely undressed when you heard the first alarm; that is, the first shots?—A. Yes, sir.

Q. When, with reference to the first shots, did call to arms go?—A. You mean the first shots I heard, sir?

Q. The first shots you heard.—A. Probably about a minute and a half after.

Q. Do you happen to know by whose order the call to arms was sounded?—A. No, sir; I do not.

Q. How much clothing did you put on and how long did it take you?—A. I put on my trousers, blouse, shoes, without lacing them, a hat, and that was all.

Q. Did you hear any firing after you reached your company?—A. I recollect hearing shots while I was crossing the parade ground from my quarters to the company parade. I can not say positively whether I heard shots or not while I was forming my company.

Q. Do you recollect hearing any firing after the roll was called?—A. No, sir; I think not.

Q. What was the nature of this firing you heard as you were crossing the parade; the same character of firing you had previously heard, and which you described as rifle shots?—A. Yes, sir; it struck me as about the same.

Q. Any different from the earlier firing?—A. I could detect no difference, sir.

Q. Did you hear the sound of any bullets going over the post at the time you crossed the parade or later?—A. No, sir.

Q. What was the purpose of this roll call which you described?—A. To see if all men of the company were present.

Q. Was it simply the ordinary roll call which is called at any formation, or was it called for some special purpose?—A. It was simply called to see that all men of the company were present; I don't know for what purpose.

Q. Was there considerable excitement manifest in the company at the time you arrived?—A. Yes, sir.

Q. Did you hear any spoken words as the men were falling in?—A. There was some conversation about getting ammunition. Most of the men had come down without their guard cartridges, which are kept in their McKeever cartridge boxes, and those men without ammunition were trying to borrow from those that had it. This caused some talk. I can remember no other conversation.

Q. Were the arms of the men inspected at this time?—A. No, sir.

Q. When were they inspected, if at all?—A. They were inspected the next morning.

Q. Where were they inspected?—A. On the company parade.

Q. Who did the inspecting?—A. I inspected them myself, and later Major Penrose and, I think, Captain Lyon.

Q. About what hour of the morning was this inspecting done?—A. As near as I can recollect, I think it was some time after 6; probably half past 6.

Q. Did you do this inspection of your own volition or were you given an order?—A. I was ordered by Major Penrose.

Q. At what time?—A. The night before; to make an inspection as soon as it was light enough to see in the morning.

Q. About what hour is daybreak in Brownsville at that season of the year, if you have any idea?—A. I remember at the march for reveille, about 6.15, it was not yet light enough to make a complete inspection of the pieces. I should say half past 6 was about the time this inspection was made.

Q. About what time did Major Penrose give you this order the night before, if you remember?—A. I think it was somewhere about 2 o'clock, sir. I am not sure of the hour.

Q. How long does it take to clean a rifle after it has been fired?—A. You refer to the bore only?

Q. I refer to the bore only; a rifle otherwise clean.—A. I should say about from five to ten minutes.

Q. Have you ever been an enlisted man?—A. No, sir.

Q. Are you a West Point graduate?—A. Yes, sir.

Q. Did you ever fire a rifle as a cadet?—A. Yes, sir.

Q. Did you find it necessary at that time to spend five or ten minutes upon the bore of your rifle, after having fired it, in order to remove the traces of burned powder?—A. Yes, sir; that's what I based my answer on, as near as I could recollect.

Q. Were any special instructions given you, as company commander, by Major Penrose on the afternoon of August 13?—A. I was ordered to have my company notified that all passes would terminate that evening after retreat, and that no man would be allowed in town on any pretext whatever that night.

Q. Were you told how you were going to communicate this information to men already on pass?—A. I think that I was told that if any men of the company were already in town, to send out and have them notified to return to the post.

Q. But you are not positive of this?—A. No, sir; I am not. I do not recollect the exact words of the order at this time. The impression I got was that all men in town were to be brought in immediately, and none allowed to go out.

Q. Were you directed to cause your noncommissioned officers to make any additional inspections of the company after taps?—A. No, sir.

Q. Were you told to have any roll calls of any nature to ascertain when all of the men had come back to the post?—A. I was told to see that this order was carried out.

Q. Do you know whether or not it was carried out?—A. Yes, sir; I am sure that it was carried out. My first sergeant reported to me after retreat that he had published the order to the company at retreat, and that all the men of the company were in barracks.

Q. How do you account for the absence of these three men when the roll was called about midnight?—A. Two of these men had permission to sleep at the quartermaster corral, and the third was drunk, asleep on his bunk in quarters and could not be gotten up.

Q. Did you see him there?—A. I did not see him there, but the noncommissioned officer whom I sent to verify his presence reported this fact to me.

Q. When did you next see this drunken soldier?—A. About an hour and a half after this, when I was superintending the locking of the pieces in their racks, the company having been ordered back to their barracks, I saw him in his bunk and tried to stir him up.

Q. How many men were on pass on August 13, 1906?—A. I do not recollect, sir.

Q. Were passes required at Fort Brown before enlisted men could leave the reservation?—A. Passes were required to be absent from any formation or to remain in town at night.

Q. At any other time the men could pass freely in and out?—A. During the daytime; yes, sir.

Q. What method, if any, was adopted to ascertain whether men passing out at night had passes? In other words, who saw the pass before they passed out of the reservation?—A. You mean men that had passes?

Q. Yes.—A. It is my recollection that they left their passes with the noncommissioned officer in charge of quarters.

Q. So if a man had no pass and didn't present himself to the noncommissioned officer in charge of quarters, might he not just as well go downtown as the man who had the pass?—A. Yes, sir; provided he got back in time for the next check or formation.

Q. And after the next check, could he not then return to town?—A. Yes, sir.

Q. How many guns were there in the company at this time in excess of the number of men?—A. About 13 or 14, sir.

Q. About the time the company was assembled, about midnight, was any inspection made to see whether or not these 13 or 14 guns were in place?—A. No, sir.

Q. Was any order given in your company to have extra check roll calls made after taps on the night of August 13?—A. I recollect no such order, sir.

Q. If any such order had been given, it would have been given through you, would it not?—A. Through me or the officer of the day, sir.

Q. Would the officer of the day have authority to give orders to your first sergeant of that nature?—A. The officer of the day can take check at any time he pleases and turn out the noncommissioned officer in charge of quarters for that purpose.

Q. Do you know whether or not he so did upon this night?—A. No, sir; I do not know.

Q. How many rounds of ammunition were in the possession of each man on the afternoon of August 13?—A. I believe each man had 10 rounds of ammunition for guard purposes.

Q. What was the character of this ammunition?—A. I think it was the regular jacketed bullet—I mean the regular—yes; rifle ammunition, for the model 1903 Springfield rifle.

Q. With jacketed bullet?—A. Jacketed bullet.

Q. If each man was supposed to have 10 rounds of ammunition, how do you account for the fact that certain men turned out to this roll call without any?—A. The men were under great excitement; there was no light in quarters, with the exception of a small candle, I believe. Most of the men believed they were being fired upon; some of them believed it was fire call, and they got down about as quick as they could, most of them with very little clothing on. I think it quite possible, in the confusion, for them to overlook their boxes. Quite natural, I mean, instead of possible.

Q. Some of the men, however, fell in full dressed, did they?—A. Some of them, as I recollect it, had on blouses and trousers. I recollect none having leggings on.

Q. Do you remember whether or not any of the men showed signs of recent exertion; that is to say, panting, or anything of that kind?—A. No, sir; I recollect no such signs.

Q. What efforts were made by you or anyone else to your knowledge, after the shooting, to detect the guilty parties?—A. The next morning pieces were inspected by order of Major Penrose, and I was ordered to carefully question each man by himself and take down his statement in regard to this affair and find out, if possible, anything he knew about it.

Q. Were these statements sworn?—A. No, sir.

Q. They were not, then, in the form of an affidavit?—A. No, sir; they were not in the form of an affidavit, though I cautioned them—that is, each man—that he might have to swear to this later—that is, it might be put in the form of an affidavit.

Q. Did you make any effort subsequent to these statements, as made by the enlisted men, to discover whether or not they were true?—A. You mean did I believe they did not? In what way, sir?

Q. No; I will explain my question. These men made certain statements to you, and did you investigate any other persons to discover whether or not the statements of these men, if they perhaps said they were in garrison, were true?—A. I knew of no other persons to investigate.

Q. What special efforts, if any, were made to hold the men in garrison after 5 p. m. August 13?—A. I believe the officer of the day was instructed to send patrols into town——

By the counsel:

Is this to go in as hearsay or are you trying to get what the witness knows himself? He indicates that he does not know.

Q. Do you know that of your own knowledge?—A. No, sir; I heard this.

Q. And as far as you know, aside from the order that men should come back, no other orders were given to hold them after they got back?—A. No, sir; none that I know of of my own knowledge.

By the counsel for accused:

May it please the court, and I refer to the record, I think that the witness has stated that all passes were to be withdrawn and the men held in quarters that night.

By the judge-advocate:

No such statement was made, may it please the court.

(By request last three questions and answers on page 1035 [488] of record were read over.)

(President of the court here asked that witness explain his answer to last question.)

(Question was repeated to witness.)

A. I did not exactly understand the question.

By counsel for accused:

May it please the court, I object to that form of questioning anyway. It is a leading question, intended to furnish the witness with an answer and based upon a supposition in the minds of the prosecution, which does not exist in the

record. It is objectionable on several grounds, but in its form particularly, and I object to it. We ask for a ruling of the court and that the judge-advocate be instructed to desist from that form of questioning.

By the judge-advocate:

I have no objection whatever to changing the form of the question. I am not trying to take any unfair advantage of counsel.

By the counsel:

Counsel can look out for himself.

By the judge-advocate:

I dare say.

By the counsel:

The court has asked for an explanation of a question to which we object. We object to the question on a fair ground; we have stated our objection and asked for a ruling of the court. I want to know is the court going to insist on that going on?

By the president of the court to the judge-advocate:

Do you withdraw your question?

By the judge-advocate:

I will withdraw the form of it, but if they object and want a ruling of the court I have no objection to that.

By the counsel:

All we want, if question is withdrawn, is that witness be not made to go on with explanation of the question.

(The judge-advocate then withdrew the question.)

Q. Were you aware of the state of feeling existing toward the men of the command on August 13?

To this question counsel for accused objected, as follows:

I object to the question, may it please the court. It has not been established in evidence that there is any state of feeling to furnish the witness with that information being previously adduced in evidence, and it forms a leading question, to which I object. Furthermore, this witness is not supposed to know what is charged against the accused, and that furnishes him information thereof.

By the judge-advocate:

May it please the court, the state of feeling is a question of fact. That feeling might have been the most kindly in the world, and the witness might so answer. I do not know what his answer will be. I merely asked if he was aware of the feeling toward the men of the command by the people of the town.

By the counsel:

My contention is simply that this is intended to furnish the witness with the information that there was a state of feeling——

By the judge-advocate:

Of course there was; kindly or otherwise is a question of fact.

By the counsel:

It must be first established through the testimony of the witness whether or not there was any feeling at all. There might have been a complete absence of feeling between the soldiers and the people at Fort Brown; there has been nothing established, as far as this witness goes, that there was any feeling at all, and for any question to assume that he has testified there was a state of feeling that question is objectionable in its form. I think the judge-advocate should be instructed to frame his questions so as to bring out from the witness

all the knowledge he has on the subject—not to assume he has any knowledge that has been previously brought out or that the judge-advocate may wish to bring out from any other witness. He is continually making use of that form of questioning, and it is objectionable.

By the judge-advocate:

I still maintain that the state of feeling, whether pleasant or otherwise, is a question of fact, and I simply asked him if he was aware of that fact.

By the counsel:

As I understand, our objection is that this is a leading form of examination. He has got an intelligent witness, and while we don't object to bringing out all the facts we do object to bringing out the facts in the form in which he is attempting to do it, suggesting answers in any way to the witness, and we ask especially at this time that instructions be given on that point, that the judge-advocate refrain in any way from the form of a leading question or suggesting an answer. I don't believe it necessary in regard to this particular witness.

By the judge-advocate:

As the court is well aware, this officer was a company commander of Company B on the night of August 13, 1906, and, while I do not doubt he is telling the entire truth, at the same time I think under the circumstances it is allowable and permissible for me to ask questions which are perhaps a trifle leading—for that reason alone.

The accused, his counsels, the witness, the reporter, and the judge-advocate then withdrew and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce the decision that the objection is not sustained, and the court declines to give instructions to the judge-advocate as requested by counsel for the defense.

(The question was then repeated, as follows: Were you aware of the state of feeling existing toward the men of the command on August 13?)

A. I am not sure what the state of feeling was. I knew of no feeling on the part of the soldiers, as a body, against the town people, or of the town people, as a body, against the soldiers.

Q. Was there a sentinel about B Company barracks on the night of August 13?—A. Yes, sir; B Company barracks was a part of this sentinel's beat. In other words, he passed the barracks in marching along his post, in front and in the rear.

Q. Do you happen to know who this sentinel was?—A. No, sir; I do not.

Q. Aside from the order revoking passes and the patrol sent out to bring men back to the garrison, were any orders given which would tend to hold the men in the post?

By the counsel:

We again object. The question suggests something this witness has not said anything about, if I recall it, about patrols. We appeal to the record. Certainly the evidence of this witness can be brought out without suggesting that.

By the judge-advocate:

I am willing to appeal to the record, and if it is not there I will change the form. I am perfectly willing to do that.

By the counsel:

I am quite sure that the witness did not say he knew of his own knowledge anything about patrols being sent out, and we appeal to the record and request it be read.

By the judge-advocate:

To save time I will withdraw the question. Is that satisfactory?

By the counsel:

Yes.

Q. In answer to the question, "Describe the sound of these shots," you said they sounded like rifles. Any particular kind of rifle?—A. No, sir. I know they were not .22 caliber rifles.

Q. What were they—that is, what did you think they were?—A. I thought they were ordinary high-power rifles.

CROSS-EXAMINATION.

QUESTIONS BY THE ACCUSED.

Q. When did you join, Mr. Lawrason, the service, from the academy?—A. I joined my regiment 15th of September, 1904.

Q. Have you been in action at all?—A. No, sir.

Q. Are you an expert at all on rifle firing?—A. No, sir; I don't think I am.

Q. Could you distinguish that night any different sounds from the ones you described as rifle shots?—A. No, sir.

Q. Might there have been other shots mixed up with it?—A. Yes, sir; there might.

Q. You don't think you are expert enough, then, to detect the difference, even if they had been there—been pistol shots mixed up with it?—A. No, sir; there might have been pistol shots mixed up with it. I failed to detect them.

Q. How long had you been at Brownsville, Mr. Lawrason, when this occurred, on August 13?—A. About three weeks, I believe, sir.

Q. Do you remember the exact date when the regiment got there?—A. It was near the latter part of July, I do not remember the exact date, sir.

Q. Do you know where all the officers lived there at Fort Brown, Mr. Lawrason—that is, during your stay there?—A. Yes, sir; I believe I do. I know where most of them lived.

Q. Will you go to the map there and point out where they lived? You pointed out your own and Captain Macklin's. There were three other officers there that night, weren't there?—A. Yes, sir.

Q. If you know, will you point out their houses, call off the numbers and the names?—A. Major Penrose lived in A, I believe, the commanding officer's quarters.

Q. That's known as the commanding officer's quarters?—A. Yes, sir.

Q. Who lived in No. 1?—A. I believe No. 1 was vacant.

Q. No. 2, who lived in that? Wasn't that vacant, also?—A. I believe it was; yes, sir.

Q. Who lived in No. 3?—A. No. 3 was where Captain Lyon lived, I think.

Q. And who lived on the other side of Captain Lyon, No. 4, at the time I mean?—A. I think that was vacant at the time.

Q. And No. 5?—A. I think No. 5 was vacant.

Q. Wasn't Lieutenant Grier in No. 5?—A. I believe he lived in No. 6, I am not sure of that.

Q. Either 5 or 6 was vacant, and Lieutenant Grier lived in one or the other?—A. Yes, sir; I believe he lived in 6.

Q. How about 7 and 8?—A. Seven was vacant, I think, and Lieutenant Thompson—no; he had moved out—8 was vacant also at that time.

Q. You lived in where?—A. No. 10, sir.

Q. Who was in No. 9?—A. No. 9 was vacant.

Q. Where was Captain Macklin, you say?—A. In No. 11.

Q. Who lived in No. 13?—A. A quartermaster clerk there.

Q. What is his name; do you know?—A. I can't call his name just this minute.

Q. Matlock?—A. Matlock.

Q. Now, you said this firing commenced about a little after 12; how did you fix that in your mind—that time?—A. I do not recollect looking at any clock at this time. I probably got this impression from conversation I heard after——

Q. Afterwards?—A. Yes, sir.

Q. You are not sure of the time, then?—A. No, sir.

Q. Now, you said the first thing you heard was a bunch of shots, and that this was followed by five or six, and by a volley of five or six, and then by scattering shots. Have you any distinct impression of how many shots were in this bunch, the first that you thought——A. It seemed to me about five or six; that was about the idea I got.

Q. Have you in your mind now a distinct impression that there were three bunches of five or six shots separate from each other?—A. No, sir; I have not a distinct impression of the exact number of bunches or volleys. I might have heard two or three or perhaps only one distinct volley.

Q. Can you tell the court just how these have impressed themselves on your mind, commencing with the bunch you say had five or six; then how long was it after that before you heard the next?—A. The first shots waked me up; that was a bunch of shots, as I recollect, or volley.

Q. A volley?—A. By a volley I mean a scattered volley.

Q. And where did you locate that? What was the impression on your mind at the time as to the direction of this?—A. In the direction of town, sir.

Q. Were they close, or did they seem to be pretty well off?—A. They seemed to be pretty well away from me.

Q. Have you got any distinct impression in your mind now as to about where they were in the town?—A. No, sir; I don't think I could locate them within five or six blocks—the general direction of town.

Q. Could you locate any of them within five or six blocks at any time, any of this firing you have described?—A. I don't believe I could, sir.

Q. Did you have the distinct impression in your mind at the time that this was coming from town?—A. Yes, sir.

Q. What time did you get that impression; what stage of the proceedings, I mean?—A. Very soon after I woke up.

Q. Before you came out of the house?—A. Yes, sir; while I was putting on my clothes.

Q. How long do you think it really took you to put on your clothes

and get out of the door, from the time you roused yourself up?—A. Inside of four minutes I believe I was out on the parade ground.

Q. Whereabouts? You mean in front of your company?—A. In front of my quarters, on the way to the company.

Q. What kind of a night was it, Mr. Lawrason? How would you describe it?—A. It was starlight; there was no moon, but I don't believe the sky was cloudy.

Q. Did you see anybody or meet anybody before you got to the company?—A. Yes, sir; I met a soldier who had been sent over from the company to wake me.

Q. Who was this? Do you remember?—A. I believe it was Private Conn, of Company B.

Q. Do you know who sent him?—A. I think the senior noncommissioned officer present, who was forming the company.

Q. And you don't recall who that was?—A. I believe it was Corporal Coltrane, of Company B.

Q. Will you go to the plat now and show this court about where this man Conn met you?—A. I met him just as I got on the grass—about there, I think. (Witness indicates on map point in front of his quarters, just off the cross walk leading from No. 9 to the east end of D barracks.)

Q. Is that cross walk put in correctly on the plat?—A. The cross walk went right straight across from the other end of B Company barracks, much nearer B Company than D.

Q. Then was it about the same point in front of quarters Nos. 9 and 10, or where did it strike that walk in front of the officers' quarters?—A. My recollection is it was up nearer quarters 8; in other words, went across more like that. (Witness indicates a line just to the west of No. 8 and B barracks.)

Q. Then you were just off that cross walk on the grass?—A. Yes, sir.

Q. How close did this man get to you before you recognized him?—A. About 2 feet. I almost ran into him.

Q. You mean you almost ran into him before you recognized him or before you saw him?—A. Yes, sir; in fact, I passed him before he called to me.

Q. Then, in your hurry getting out you almost passed the man without seeing him? Is that what you mean to say?—A. Yes, sir.

Q. How far could you have recognized him, know who he was—by sight, I mean, not by sound of voice?—A. I don't believe I could have recognized him over 3 feet.

Q. Are you sure that this man Conn was sent by this noncommissioned officer and not by Major Penrose?—A. No, sir; I am not sure who he was sent by. He reported to me that he had been sent over to wake me up, and I assumed that the noncommissioned officer in charge of the company had sent him.

Q. That was all the conversation that passed between you at that time that you recall now?—A. Yes, sir; that's all.

Q. How long after this before you got to your company quarters?—A. I believe about ten seconds. I ran.

Q. You ran there?—A. Yes, sir.

Q. Was anybody—any officer—in front of your company at that time?—A. I am not sure that there was any officer in front of the company. I remember Major Penrose being in the vicinity.

Q. Was the first sergeant calling the roll when you got there?—A. No, sir.

Q. Where did your first sergeant live?—A. He lived in a set of noncommissioned officers' quarters in the northeast corner of the post.

Q. Is that the set up there northeast, or nearly north of the guardhouse, indicated on the plat?—A. Yes, sir.

Q. That's the locality in which he lived, was it?—A. Yes, sir.

Q. How long after you got there before the first sergeant got there?—A. Probably about two minutes.

Q. The company was being formed at this time, was it?—A. Yes, sir.

Q. This call to arms, then, sounded before you got onto the parade? I understood you to say it was about a minute and a half from the time you first heard the shots.—A. My recollection is that call to arms sounded while I was coming downstairs. It was before I reached the parade ground.

Q. And you remember where this was sounded from, what direction?—A. From the direction of the guardhouse.

Q. Was it taken up by any others that you recall? Any other buglers?—A. Yes, sir; I heard it sounded in B Company and I think C, as I came across the parade ground. From the barracks in that direction, at any rate.

Q. Do you remember how many times those buglers sounded that call?—A. I do not recollect the exact number of times, but it was sounded several times I know.

Q. Do you know of your own knowledge whether this was ordered sounded, and if so, by whom?—A. Not of my own knowledge, sir.

Q. Now tell the court how much confusion—what you meant by confusion—how much confusion there was in your company at this time. What was the nature of it?—A. The men seemed very much excited, and the impression I got right away was that they believed their barracks to have been fired into from the town of Brownsville. Most of them were only partially dressed, and those that were completely dressed seemed to be just finishing their toilet as they came down, buttoning up blouses, etc.

Q. Do you know how these men got their arms that night from the armracks?—A. No, sir; I do not.

Q. How many armracks did you have in your barracks?—A. Four, I believe, sir.

Q. And are those armracks of the latest pattern for the new Springfield rifle?—A. Yes, sir.

Q. They carried how many rifles, do you know?—A. I don't know exactly, sir.

Q. Were they prepared to carry anything else than the rifles?—A. Yes, sir; they were prepared for revolvers.

Q. Did you have any company revolvers in them?—A. No, sir.

Q. Where were your company revolvers kept?—A. They were kept locked in the ordnance storeroom in the company barracks.

Q. And where were your extra rifles kept?—A. They were kept in the storeroom also.

Q. Were they kept locked?—A. Yes, sir.

Q. Who had the key to that?—A. The company quartermaster-sergeant.

Q. Were the rifles themselves locked in boxes, besides the door being locked?—A. Yes, sir; they had not yet been unpacked after the move of the company from Fort Niobrara, Nebr.

Q. All of your extra ones, then, were still packed in the original package, as it came from Fort Niobrara?—A. Yes, sir.

Q. Did you examine that package the following day?—A. Yes, sir; examined it next morning.

Q. At the same time you examined the arms?—A. Yes, sir.

Q. What was the condition of that package at that time?—A. The box was nailed.

Q. Was it intact, or did it give evidence of having been tampered with?—A. As far as I could tell, sir, it was intact.

Q. Where were your pistols?—A. My pistols were locked in the company arm chest in this ordnance storeroom.

Q. Did you examine them next day at the time of the inspection?—A. Yes, sir; I had the box unlocked and the pistols counted.

Q. Were they or not intact?—A. They were intact, sir.

Q. Were any of them out in the hands of the noncommissioned officers?—A. No, sir.

Q. Now, you said that you saw this man who was drunk on his bunk when you locked the rifles in the armracks that night about an hour after this?—A. Yes, sir.

Q. You locked them in yourself?—A. I saw them locked in by the noncommissioned officer in charge of quarters.

Q. Was it possible for anyone to clean a rifle barrel in that armrack?—A. No, sir; I believe not.

Q. Have you any doubt in your own mind that those arms were intact in that armrack, in the same condition the following morning as you put them there that night and locked them in?—A. I believe they were, sir.

Q. When your first sergeant reported the men absent it included the guard, of course? The guard was not formed with your company at that time?—A. No, sir; the guard was at the guardhouse.

Q. When you said the company was composed of 56 or 57 men, that included the guard?—A. Yes, sir.

Q. Do you recall how many men you had on guard that night?—A. I believe I had seven, including noncommissioned officers.

Q. How many posts did you have on in that garrison?—A. We had four, sir.

Q. Can you tell the court where they were? If you prefer to show it on the map, it is immaterial to us.—A. One was at the guardhouse; another walked around the four sets of enlisted men's barracks; another was in rear of the officers' quarters, and the fourth was around the quartermaster corral, the wood yard and buildings.

Q. Where is that quartermaster corral and wood yard with respect to the guardhouse?—A. It is about southeast of it, sir, or nearer south; more south than southeast.

Q. Isn't it nearly southeast? You see the indicator there, Mr. Lawrason?—A. Oh, yes, sir; I see. Yes, sir; it is more nearly southeast.

Q. I think you said you had two men sleeping at the corral. What was these men's names?—A. Private Alfred N. Williams and Private Elmer Brown, of Company B.

Q. Did they have their rifles with them, or where were they?—A. Their rifles are kept locked in the company armrack.

Q. Were these men subsequently accounted for, and did you see them that night?—A. Yes, sir; after the roll was called and three absentees reported to me I sent a noncommissioned officer to look these men up, and he returned and said he had found them all, told me where he had found them, and the men subsequently joined the company, with the exception of Private Smith, who, as I said before, was drunk in quarters.

Q. Are those the only two men that subsequently joined your company that night on the position from the time you called the roll—had the roll call?—A. There was Private John Brown, who slept in the bake shop.

Q. Where was his rifle kept?—A. His rifle was kept in the company armrack in barracks.

Q. And they were in the barracks at that time—these rifles of these men?—A. Yes, sir.

Q. Did those men report to you personally?—A. They joined the company, and the first sergeant told me that they had joined. They were present at roll call about an hour, I think, after the company was posted.

Q. Who was your first sergeant?—A. Mingo Sanders.

Q. How much service had he?—A. He was in his twenty-sixth year of continuous service.

Q. Do you remember when the first sergeant reported to you that these men were in ranks?—A. It was shortly after the company had been posted along the wall; within ten minutes, I think, after the company had been posted.

Q. What were you doing when this was reported to you?—A. I was standing near the gate between Fort Brown and the town of Brownsville.

Q. The main gate you mean?—A. Yes, sir.

Q. Do you know of your own knowledge how these men reported—whether they reported equipped or without their equipments, to the company itself?—A. They reported without their equipments, and were sent by the first sergeant into the quarters to get them.

Q. You know that of your own knowledge, do you?—A. Yes, sir.

Q. That is, the three men whose names you have given, and including Private Smith, who was drunk?—A. I would like to state in explanation that Private Alfred N. Williams joined the company before it marched out. I told the judge-advocate that three men were reported absent; one of those was Private John Brown, that slept at the bake shop.

Q. Right in that connection tell us exactly who the men were who were reported absent.—A. They were Private John Brown——

Q. And he was where?—A. He slept in the bake shop.

Q. And who else?—A. Private Elmer Brown.

Q. And he slept?—A. At the quartermaster corral.

Q. And who else?—A. Private William Smith, who slept in quarters.

Q. Those were the only three men that were reported absent?—A. Yes, sir.

Q. And the two men sleeping at the corral and one sleeping in the

bake shop were both reported, as you say, and were sent to get their rifles and equipments?—A. Yes, sir.

Q. In this connection, do you happen to know whether Private Elmer Brown—the one who was in the corral, I mean—had any specific instructions from the commanding officer, Major Penrose, as to what he was to do in a case of emergency? Do you know of your own knowledge?—A. Only what he told me later himself, that he was ordered——

By the judge-advocate:

I object to this as hearsay. The witness says he does not know it of his own knowledge, and was told afterwards.

By the counsel:

Wait; I will ask one question.

Q. Was this brought out as a result of your investigation and reported to you officially by this man?—A. When I questioned Brown the next morning I asked him why he didn't come up with Williams, and he told me that he thought it was a fire—the alarm was over fire—and he had been ordered in such a case to remain with the horses.

Q. Whose horses?—A. Major Penrose's horses.

At this point the court, at 12.10 o'clock p. m., adjourned to meet at 10 o'clock a. m., February 23, 1907.

CHAS. E. HAY, Jr.,
Captain, Acting Judge-Advocate, Judge-Advocate.

THE PENROSE COURT-MARTIAL—Continued.

PART 3.

FEBRUARY 23, 25, 26, 27, AND 28, 1907.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., February 23, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocate. The accused, his counsels, and the reporter were also present.

The reading of the proceedings of February 22 was dispensed with.

Lieut. GEORGE C. LAWRASON, Twenty-fifth Infantry, was reminded that he was still under oath.

The counsel for accused here addressed the court as follows:

May it please the court, we think it is but fair to announce at this stage of the proceedings, while this first real military witness is on the stand, that we purpose on cross-examination going into everything that we can legitimately go into on cross-examination and try to our utmost to place before you everything, in so far as we can, he and each of them saw that night. It is not our purpose or our desire to suppress anything or to limit the examination, either by the judge-advocate or on our own part or, finally, and more important still, the examination on the part of the court; but we wish to say to you that we expect to place this and each of the other military witnesses on the stand as witnesses for the defense when the proper time comes, to bring out special things that perhaps will not be brought out here, and our purpose in making this announcement is to advise you, so that you can feel certain that you will have further opportunity, at a later stage of the proceeding, to go into things that the judge-advocate may not have seen fit to bring out at this time.

CROSS-EXAMINATION OF LIEUTENANT LAWRASON CONTINUED.

Q. Mr. Lawrason, have you since giving your evidence of yesterday taken any steps to ascertain the hour of reveille at Brownsville on the 13th of last August?—A. Yes, sir.

Q. What steps have you taken?—A. I procured a true copy of the order giving the hours for the calls at Brownsville.

Q. From whom did you procure this true copy and by whom was it certified?—A. I procured it from the military secretary of this department, and I believe it was certified by Mr. McCaskey.

Q. Have you that copy in your possession?—A. I have, sir.

Q. Let's see it, will you?

(Witness hands paper to counsel.)

Q. This is certified to be a copy of the order giving the service calls at Brownsville at the time of its issue?—A. Yes, sir.

By the counsel:

May it please the court, and in order that we may not be called upon further to have confusion as to the hour of the service calls at the time in question, we now offer in evidence this duly certified copy of the service calls, and we will ask that the witness be authorized to read that portion of it relating to that.

(Witness then read to the court the entire order, which is hereto appended and marked .)

By the judge-advocate:

Simply one point: That is a true copy of a true copy; but I don't intend to make any point of that. It can go in as it is.

Q. It was given you by the military secretary of the department from the proper files, as the service calls at that time, was it not?—A. It was given me by Mr. McCaskey after I had spoken to the military secretary about this, and he had given permission that this be given.

Q. Did you also have practice marches down there, Mr. Lawrason?—A. Yes, sir.

Q. At what time did you have those? What was the practice in that regard?—A. As soon after reveille and breakfast as possible. We generally left about 6 a. m.

Q. And when did you return ordinarily from those practice marches?—A. Generally about 10 o'clock a. m.

Q. And when was guard mounting held on days you made your practice marches?—A. Guard mounting was held after the return; as soon as possible after the return of the company from practice march, time being allowed the men to change uniform.

Q. As a matter of fact, wasn't sunup about 6.02 in the morning on the 13th of August in that latitude?—A. I believe sunup was in the neighborhood of 6 o'clock. Very near 6, as I remember.

Q. How was the light at reveille as you recall it?—A. At first call for reveille, quarter past 5, it was not very light. About half past 5 it was light enough to distinguish objects easily.

Q. Was it light enough at reveille, or at half past 5, to see to make an inspection of guns satisfactorily?—A. About five minutes after assembly for reveille, or about 5.35, I believe it was.

Q. When did you actually commence your inspection that morning?—A. It must have been in the neighborhood of 5.45 that I commenced this inspection. I believe it was sunrise before I finished it.

Q. Had you caused these pieces to be placed in the gun rack, as distinctly ordered by Major Penrose the night before—the guns of the command that were out?—A. Yes, sir; I saw them placed in the rack, counted, and the rack locked.

Q. And these guns remained in there until your inspection the following morning?—A. I believe they did, sir.

Q. Are you familiar with the construction of these gun racks that were in use for the Springfield rifle?—A. Yes, sir.

Q. Explain to the court generally the construction thereof.—A. There are three circular rests, you might call it, extending around an upright post. The lower is a few inches from the floor and supports the butts. The second holds the muzzles of the rifles, I believe, a few inches from their ends, and the third, the upper one, is meant to contain revolvers. An iron band circles the racks near the top for the rifles and also for the revolvers, and these are locked on.

Q. These three circular pieces that you mentioned—as I understand, the bottom one has a place cut out to hold the butts of the pieces?—A. Yes, sir.

Q. And about how deep is this cut that holds the butts?—A. I believe it to be about half an inch in depth.

Q. There is an iron band on the outside of that circular piece of wood?—A. Yes, sir; you can not pull the butt out from this groove.

Q. The middle piece, is that the part around which the band goes that holds the muzzles of the guns in place?—A. Yes, sir.

Q. And that's the part that is locked?—A. That's the part that is locked to hold the rifles in.

Q. And this band is how locked?—A. There is a Yale lock which goes through a hasp or staple after this iron band is closed and holds it shut.

Q. Now, this upper piece is for what purpose—the upper circular piece I refer to?—A. That's for the purpose of holding the revolvers.

Q. And with respect to the rifles themselves, what purpose does it serve?—A. It fits down almost on top of the muzzles of the rifles and extends out over them.

Q. Does its location prevent the removal of rifles while the band that locks them is locked?—A. Yes, sir.

Q. How much play is there, as you recall it, between the muzzle of the piece and this upper circular wood piece?—A. As I recall it, the upper circular wood piece almost touches the muzzles of the rifles.

Q. There is enough play for what purpose?—A. Just to allow the rifle to be put in and taken out, as I recall it.

Q. But not enough to permit the rifle being taken out while it is locked?—A. No, sir.

Q. Is there any opening through this upper piece that covers the muzzles of the rifles through which a ramrod or other similar rod for cleaning a gun could be inserted into the muzzle while the gun is in the arm rack?—A. I believe not, sir.

Q. Were these arm racks locked the next morning when the company was formed for inspection?—A. Yes, sir.

Q. Were all your guns properly accounted for when they were put in there the night before, to your knowledge?—A. Yes, sir.

Q. You stated that you had 13 or 14 rifles packed away in the ordnance storeroom. Where were they in the ordnance storeroom? Tell the court about it.—A. They were in an arm chest.

Q. Where was this arm chest?—A. It was in my ordnance storeroom, and when I went there the next morning it was covered with bunks and a box or two.

Q. You had to remove these in order to get at this particular box?—A. Yes, sir.

Q. When did you leave Fort Niobrara to come down there? How long before this, approximately?—A. About three weeks before this.

Q. Was this box fastened up at this time?—A. Yes, sir.

Q. Had it been opened, to your knowledge, from the time it was packed at Niobrara until you opened it the following morning, August 14 last?—A. No, sir.

Q. When you opened it, tell the court how it was done.—A. It is my recollection that the top of this box was nailed on. I had a man open it with a hatchet. The pieces were in place inside the arm chest and fastened in with blocks to prevent their rattling around during shipment.

Q. Did you notice specifically whether or not these blocks or cleats were in their places and had to be removed in order for you to see the guns to examine them?—A. Yes, sir; they were in their places and had to be taken out in order to remove the guns.

Q. So that in order to get at this box you had to remove two or three boxes and a lot of bunks?—A. Yes, sir.

Q. And you found it nailed down?—A. Yes, sir.

Q. And these cleats in place?—A. The cleats were in place.

Q. Now in regard to your pistols. Do you recall how many pistols you had?—A. I believe I had nine.

Q. Did you have at that time the same number that you were accountable for on your ordnance accountability?—A. Yes, sir; I did.

Q. Where were those pistols when you—you did inspect these pistols the next day?—A. Yes, sir.

Q. Where were these pistols?—A. They were in a box.

Q. And this box was where?—A. In the ordnance storeroom, the top nailed on.

Q. And whereabouts in the ordnance storeroom? Do you remember specifically?—A. I think it was packed with the box I just mentioned carrying the rifles.

Q. Did it have anything on it? Was it necessary to move anything in order to get at it?—A. I believe it was. My ordnance storeroom was very small and the stuff therein was a good deal crowded.

Q. What did you remove, as near as you can recall it now?—A. I can not recollect the particular variety of box or package I moved. I remember the quartermaster-sergeant pulling several articles out of the way before reaching the box with pistols in it.

Q. This was in what condition—this box?—A. The top was nailed on.

Q. Did you have it opened then and there in your presence?—A. Yes, sir; I had the top removed and the pistols counted.

Q. And you examined the pistols?—A. Yes, sir.

Q. What was their condition, if you recall?—A. They were coated with cosmic oil and had been for some time in this box.

Q. Being coated with cosmic oil, do you mean it was in substantially the same condition as these pistols are shipped from ordnance depots or arsenals?—A. Yes, sir; just about.

Q. There was no evidence of their having been used whatever?—A. No, sir.

Q. How was your ammunition? Tell us about your ammunition. Do you remember how much you had?—A. I had in the neighborhood of 8,000 rounds; I do not remember the exact number.

Q. In what kind of packages was it?—A. All in original packages and sealed, except one box, which contained some loose ammunition that had been left over from target practice.

Q. Did all of your ammunition come in these bandoliers?—A. Yes, sir.

Q. Was each and every of these packages of ammunition nailed down or in an original package when you inspected it on the night of August 13 and the morning of the 14th?—A. Yes, sir; all were sealed except the one box mentioned. The issue of ammunition that I made on the night of August 13 was from a sealed box.

Q. Now, tell the court about this box that was a broken package; first, how much ammunition comes in an original package of this new ammunition?—A. One thousand two hundred rounds.

Q. And that comes in bandoliers, all of it?—A. Yes, sir.

Q. And how many to a bandolier?—A. Sixty rounds to a bandolier.

Q. And then there would be twenty bandoliers to an original package?—A. Yes, sir.

Q. How much ammunition had been issued out of this box, this open box, or this box that wasn't an original package, I mean?—A. This box had contained about 1,000 rounds at the conclusion of the company target practice. One man, the company's candidate for the division rifle competition, had been allowed to use about 500 rounds of this in individual practice for the competition. As I remember my invoice when shipping my ammunition from Fort Niobrara, Nebr., to Fort Brown, Tex., this box was invoiced as containing 500 rounds of ammunition.

Q. Who was this man that was using this ammunition? What is his name?—A. Artificer Thomas H. Jones, of Company B.

Q. Had you given Jones any other ammunition than that he had used at Fort Niobrara?—A. Yes, sir; when he left for the competition he was given two bandoliers of ammunition—120 rounds.

Q. What became of these two bandoliers?—A. He returned them upon his return from the competition at Fort Reno, Okla., stating that he had been furnished ammunition of a better grade at the competition and had had no use for this.

Q. This box was fastened after this was issued to him?—A. Yes, sir.

Q. And that was issued to him just on the eve of his departure for the competition?—A. Yes, sir.

Q. At Brownsville?—A. Yes, sir.

Q. You knew how much was in this box before it was opened?—A. Yes, sir.

Q. And when it was opened in your presence and taken from under those others did it or did it not compare—the ammunition and the bandoleers—to what you knew should be in them?—A. Yes, sir; it corresponded almost exactly.

Q. Do you recollect just how many bandoleers were taken out?—A. You mean to give to Jones?

Q. No; at the time you were making your check up the following morning.—A. I do not recall the exact number of bandoleers taken out. All of the ammunition in these boxes was not in bandoleers; most of it was; the rest was in clips.

Q. And these clips were intact?—A. Yes, sir; with the exception of three or four of them.

Q. You checked up the ammunition that was in the hands of the men?—A. Yes, sir.

Q. You said something about opening up some ammunition the night before; tell the court about that.—A. Most of the men in ranks at the time the company was formed on the night of August 13 were without ammunition. I ordered the quartermaster-sergeant to have a box of ammunition brought from the ordnance storeroom. He did, and it was opened in my presence and the bandoleers distributed along the ranks. I told each man to take, as I recollect, three clips. Some of them had three and others four, probably.

Q. Was this issue made under instructions from anyone?—A. I do not recall being instructed to issue ammunition, but as I was forming my company in response to call to arms I wished each man to have ammunition.

Q. You felt it your duty, then, to see that the men were properly equipped with ammunition?—A. Yes, sir.

Q. How many did you say were in the hands of each man previous to this issue?—A. At the time the company was formed?

Q. At the time the company was formed, how much was each man charged with?—A. Each man was charged with—I can not state positively now whether it was 10 or 20 rounds, for guard purposes.

Q. This issue was made under your direct personal supervision, was it?—A. Yes, sir.

Q. Was any ammunition used by any member of your company—exploded, I mean—after this issue and up to the time you made your examination and check up of ammunition the following morning?—A. No, sir; I am sure none was.

Q. Mr. Lawrason, is it not a practice in your company for the men to keep their ammunition always in the belts or boxes?—A. I believe it is kept in the boxes—in McKeever boxes.

Q. Did you have any men among your company known as "orderly buckers?"—A. Yes, sir; a few.

Q. Was it or not a practice for that class of man to take great care of his ammunition—clean it?—A. Yes, sir; they used to shine it up.

Q. Did any of them to your knowledge keep this class of ammunition in their lockers?—A. Not that I know of, sir.

Q. Now, this following morning, at this check up, did your ammunition in the hands of the men and what you were accountable for check up properly—correctly?—A. Yes, sir; it did.

Q. So that, while you don't recall whether it was 10 or 20 rounds that the men were charged with, they had their accountability, and you had, in addition to that, all the ammunition that you had, except this 200 rounds you had issued?—A. Yes, sir; they were charged on the books with the amount of ammunition they had, whether 10 or 20 rounds I do not at this moment recall.

Q. Your men were equipped with what kind of belts?—A. With the web belt, with suspenders.

Q. And how did they carry the ammunition in these?—A. They carried them in the pockets.

Q. Pockets of the belts?—A. Pockets of the belts.

Q. And you also had something else you kept ammunition in; what was that?—A. In the McKeever cartridge box.

Q. So that the men had both this McKeever cartridge box and this belt with the straps?—A. Yes, sir.

Q. You think they kept some of their ammunition—usually kept their ammunition—in the McKeever box?—A. I am sure they kept 10 rounds of it there anyway.

Q. Now, tell the court exactly what condition your men were in as to dress when they came down at this call to arms and when you got there, during the period that you were supervising the formation of the company.—A. Very few of them were in complete uniform.

Q. And the others were how dressed?—A. The majority, I believe, of the company, or half of them at any rate, were in their trousers and undershirt. They had on various kinds of head gear, campaign hats and caps. One or two were barefooted.

Q. Did any of them come down without their arms?—A. Yes, sir; quite a number came down without their arms.

Q. Did you give or hear given any instructions about that?—A. Yes, sir; the noncommissioned officers and the file closers sent several men back to get their arms.

Q. That was within your hearing?—A. Yes, sir.

Q. Did you actually see anybody barefooted, or how did you know of this?—A. I saw one man who fell in the front rank, or was about to do so, without shoes on, and I heard conversations taking place in the rear rank, one soldier complaining that he had no shoes on, and another saying that it was no time to think about shoes when you are being shot at.

Q. You said that you listened very carefully or attentively to the calling of this roll?—A. Yes, sir; I did.

Q. Why? What was your purpose in doing that?—A. I believed at the time that the barracks had been fired into from the town, and wanted to be sure that all the men were present, thinking perhaps some of them might have been hit.

Q. So that at that time your concern was that some of your command had been hit, eh?—A. Yes, sir.

Q. Did you personally see any light in your barracks that night at the time of the formation?—A. No, sir; I saw no light.

Q. You, if I am not mistaken, gave the court the impression yesterday that there was a candle light—in your direct evidence—did you not?—A. Yes, sir. Taking the testimony of the men next morning, a number of them testified that the racks were unlocked by means of a candle light. Some of them stated that it was repeatedly blown out and it was very slow work to get the arms.

Q. So that your knowledge of this was based on your investigation and was not personal. Is that what you mean to say?—A. Yes, sir; I did not seen the light myself.

Q. The only light you saw, then, was the one you say the first sergeant used to call the roll by?—A. Yes, sir.

Q. Were your men properly equipped at the time you received the order from Major Penrose to take your station around in rear of the barracks, between the barracks and town, along the wall?—A. Not entirely. As I recall it, I received this order before the men had been completely equipped.

Q. But they were equipped before you moved around, were they not?—A. Yes, sir.

Q. Were you in a position to have determined whether or not any men joined your company from the time it was formed and started around to take its position along the wall?—A. I do not believe that any men could have joined the company without my knowing it at this time.

Q. I want to go back now and take up the question, the strength of your company. Do you remember what the exact strength of your company was?—A. I do not remember the exact strength. I carried about 60 or 61 men on paper.

Q. Now, then, you had 56 or 57 that should be accounted for there at that time?—A. There at Brownville; yes, sir.

Q. And the rest of the men were where?—A. There were two at the general hospital, Fort Bayard, N. Mex., and one on furlough in Washington, D. C., and one at the division rifle competition, Fort Sill, Okla.

Q. Did you have some men on sick report that night?—A. Yes; there were two men in the hospital and one sick in quarters.

Q. The man sick in quarters was accounted for with the company, was he?—A. Yes, sir.

Q. Now, these two men in the hospital were not included in your roll call that night?—A. No, sir; they were not.

Q. Where was the arms and equipments of these men?—A. They were locked in the company armrack.

Q. They did not have them with them at the hospital?—A. No, sir; they did not.

Q. The practice of your company then was to have the men turn in their arms, equipments, etc., when they went to the hospital?—A. Yes, sir; they carried no article of their equipment to the hospital with them.

Q. How long had you been on duty with this company, Mr. Lawrason?—A. Since September 15, 1904.

Q. Did you attend calls practically every day during that time?—A. Yes, sir; I suppose I averaged at least two roll calls a day during that time.

Q. Had the personnel of your company changed much during that period?—A. Very little.

Q. Did you actually supervise the roll call and listen to it during this time?—A. Yes, sir; I had become familiar with the appearance and general characteristics of every man in the company.

Q. And you were satisfied that night, from the careful attention you gave it, that every man who should be there was present at the roll call made on the parade ground of your company when the call to arms sounded?—A. Yes, sir; with the exception of the three men reported absent.

Q. Those three men you have in your testimony of yesterday, I believe, properly accounted for?—A. Yes, sir.

Q. You said in your direct evidence yesterday that there was confusion about the men falling in. What impression did the situation make upon your mind at the time as to the condition of the men, etc.—the situation generally?—A. I believed that the barracks had been fired into from the town. That seemed to be the belief of the men, and they were very much excited and some of them seemed frightened.

Q. Do you remember any specific acts or remarks that indicated this fear or excitement?—A. I remember one soldier remarking that it was dangerous to stand out there where you could be shot.

Q. This was at the time of the formation?—A. Yes, sir.

Q. Do you recall any other acts or words of the men that indicated this state of feeling?—A. I can not at present recall any of the words. The general appearance of the men was what gave me this impression more than anything else.

Q. As we recollect your testimony yesterday on cross-examination you said that there was a John Brown, an Elmer Brown, a man by the name of Smith, and a man by the name of Williams who were absent. Smith was the man who was drunk?—A. Yes, sir. I think I corrected that later on in my testimony, stating that Williams was not reported absent.

Q. Why not?—A. Because he reached the company before the roll call was finished.

Q. What duty was Williams on?—A. Teamster in the quartermaster's department, and slept at the quartermaster corral.

Q. He had to get his equipments after he joined?—A. Yes, sir; he was sent in the barracks to get them when he joined the company.

Q. Where did Elmer Brown sleep?—A. Elmer Brown slept in the end of the stable, where there were some officers' horses—Major Penrose's and the adjutant's horses.

Q. And John Brown was what, and where did he sleep?—A. John Brown was assistant baker and slept at the bake shop.

At this point the court took a recess until 11.15 o'clock a. m., at which hour the members of the court, the accused, his counsels, the witness, the reporter, and the judge-advocate resumed their seats.

Q. Now, Mr. Lawrason, were there any men, in addition to those you have named, who were sleeping out of quarters, barracks, that night in your company?—A. The first sergeant of the company slept in a set of noncommissioned officers' quarters.

Q. He the only one, in addition to those you have named, that you now recall?—A. In addition to the three I named as sleeping out of quarters he is the only one.

Q. Check roll call of your company is at 11 o'clock at night, isn't it?—A. Yes, sir.

Q. What is the practice at that post in regard to that? Who takes it?—A. Check roll call is taken by the noncommissioned officer in charge of quarters, who then reports to the officer of the day the result of his check.

Q. He reports the result of his check to the officer of the day. Now, how are absentees checked up? How does the company commander get at that in that post?—A. They were usually reported to me the next morning. When the first sergeant brought the morning report he would also bring a list of men that had been absent from check or reveille.

Q. At that hour, then, when the morning report was brought, you were informed officially of the status of the company at check roll call and at reveille roll call?—A. Yes, sir.

Q. Was that the general practice in your regiment?—A. I believe it was, sir.

Q. You had served under no other commanding officer of the regiment than Major Penrose?—A. I had served under Colonel Hoyt and Captain O'Neil for a short time.

Q. That was the practice under them?—A. Yes, sir.

Q. Now, was the practice under your regimental commander the same in regard to the passes, the method of handling the passes?—A. Yes, sir; it was.

Q. Then, as far as you can now recall, the practice in your regiment was to send the passes to the guardhouse or to deliver them to the company after being approved by the adjutant?—A. I am not sure whether the passes when approved by the adjutant were left at the guardhouse for the men to get or sent to the quarters at Fort Niobrara, Nebr., where I served under Colonel Hoyt.

Q. You spoke of cleaning the rifles, that you obtained experience as a cadet; what rifle did you use there at the academy, West Point?—A. Most of my service there I used the Krag-Jörgensen rifle.

Q. And cadets are required to clean their own rifles?—A. Yes, sir.

Q. Had you had any experience in cleaning of the present service rifle, the new Springfield?—A. Not after it had been fired. We were issued these rifles as cadets several months before my graduation at West Point, but I never fired this rifle on the range there or with service charge.

Q. Did you fire this rifle at all in the service?—A. During target practice with my company at Fort Niobrara, Nebr., during target season of 1906 I used this rifle.

Q. Did you clean it during that time?—A. I believe I wiped it out once or twice on the range. I never gave it a thorough cleaning.

Q. So that you had no actual experience in cleaning the present service rifle, the new Springfield, for inspection?—A. No, sir; I have never cleaned it.

Q. Speaking of target practice, as I understand, your target practice season closed and was completed before you left Fort Niobrara?—A. Yes, sir.

Q. You had not had any target practice at all during the time you were at Fort Brown?—A. No, sir; none whatever.

Q. You were asked about what efforts you made to detect the guilty parties; tell the court specifically what orders you had in regard to that investigation?—A. To make a careful inspection of the pieces of my company—rifles—next morning as soon as it was light enough to see clearly, and to conduct as thorough an investigation as possible among the enlisted men of my company to ascertain if any of them had been in the town that night or had been implicated in any way in the trouble that took place in Brownsville.

Q. When did you get this order for investigating your men; was it that night or the next morning, as you recall it?—A. I believe it was the next morning.

Q. Were you charged with the investigation of anyone aside from the members of your own company?—A. No, sir.

Q. Then, as I understand, your investigation, as you understood, your inspections, was limited to the investigation of your own men of B Company?—A. Yes, sir; it was.

Q. That order was separate and distinct then from the order directing you to inspect the rifles and ammunition as soon as it was light enough to see the following morning, which was given the night before?—A. Yes, sir.

Q. Now, you stated that you took your company around by the wall; where did you post them?—A. I first posted them as a line of skirmishers or sentinels along the wall that separates the post of Fort Brown from the town of Brownsville; the left at the main gate into the town and the right in rear of the west end of C Company's barracks connecting with C Company on my right.

Q. Go to the map, please, and show the court just where you did post them.—A. The left of the company was about here, near the gate. The right extended was about there, as I recall it, C Company being on my right.

Q. They were close to the wall?—A. Yes, sir; they were right against the wall.

Q. And about what interval was there, as you recollect?—A. The interval varied slightly. I think it was about 2 paces.

Q. Did you go along your line at all personally?—A. Yes, sir; several times.

Q. Did you have any instructions as to what the men were to do?—A. The only order that I remember distinctly was that the men were not to fire unless ordered by a commissioned officer.

Q. Who gave that order?—A. Major Penrose in person.

Q. Gave it to you in person?—A. Yes, sir.

Q. Was that after you had posted your command or before, as you now recall it?—A. I believe it was before I posted my command.

Q. And how long did your company remain there, Mr. Lawrason, in that position?—A. They remained at the wall until, I suppose, about half past 2 or 3 o'clock.

Q. Was there any change made in the disposition of the command, the entire command, during this time?—A. Yes, sir; Company D, under command of Captain Lyon, was sent into the town of Brownsville, and I extended the left of my company to partly take the place of D Company along the wall.

Q. Go to the map and show the court where you extended that squad.—A. I extended the left of my company across the gate here and down the wall, I suppose, this far, about the center of D Company barracks.

Q. And that squad remained there during the absence of Company D?—A. Yes, sir.

Q. Did you see Company D return with Captain Lyon?—A. Yes, sir; I was standing near the gate when it returned.

Q. And who was with him?—A. The mayor of Brownsville, Dr. Fred Combe, and his brother.

Q. Did you hear any conversation between Mayor Fred Combe and Major Penrose?—A. Yes, sir; I heard parts of the conversation, from which I gathered that Doctor Combe was accusing the soldiers of the Twenty-fifth Infantry of having done the shooting in town.

Q. And did you hear any reply on the part of Major Penrose? If so, what was it?—A. I can not recall the exact words. I heard the Major say he thought this was absurd; that he believed none of his men had been in town; that they were all there at the time.

Q. Did you receive any orders from Major Penrose just at this time? If so, what were they?—A. A short time after this Major Penrose ordered me to certify my company and see if every man was present.

Q. Was this order given only to you, or do you know whether it was given to anyone else at the same time?—A. I believe it was given to the other officers at the same time.

Q. Did you verify your company?—A. Yes, sir; I did.

Q. What was the result?—A. The result was that all men were present, with the exception of Private Smith, who was still in quarters, and Private Elmer Brown, who was still at the corral.

Q. When did Elmer Brown join—how long after this?—A. I do not recollect when Private Elmer Brown joined the company that night.

Q. You are quite certain that he was still absent at that check up?—A. Yes, sir; I believe he was still absent at that check up.

Q. This Elmer Brown is the man who had charge of Major Penrose's horses, is he?—A. Yes, sir.

Q. And about whom you stated he gave the special instructions yesterday?—A. Yes, sir.

Q. How did you verify your company?—A. I went along the line

with my first sergeant, as I recall it, and counted the men and compared them with the list which he had of the men that should be there.

Q. And they were all there except Elmer Brown and the sick and Smith?—A. And Smith; yes, sir.

Q. Of course your guard was not present at that time?—A. No, sir.

Q. I wish you would state now whether you received any other instructions or orders from Major Penrose from the time you were ordered to verify up to the time you were dismissed to your quarters, that you now recall.—A. I recollect his instructing me, when I marched my company into quarters, to see that the racks were locked—gun racks.

Q. Did he say anything about verifying your pieces at this time?—A. Yes, sir; he told me to count them and see that all pieces were in the racks.

Q. And you were to do that personally, eh?—A. Yes, sir.

Q. Did you do so?—A. Yes, sir; I did.

Q. Did he say anything about ammunition at this time, or what were the orders given about that?—A. The orders were the next morning to make a careful inspection of the rifles and verify carefully my ammunition.

Q. Do you remember where you were when Major Penrose gave you that order?—A. I was near the main gate into Brownsville, as I recollect it.

Q. That was before you had assembled your company and taken them in?—A. Yes, sir.

Q. Were the other company commanders present?—A. I am not positive of this. I believe that Captain Lyon was present or in the vicinity.

Q. I wish you would repeat that order as nearly accurately as you can about the inspection and checking up the ammunition.—A. As I recall it, Major Penrose told me to make a careful inspection of the pieces of the company the next morning as soon as it was light enough, and to see that they were properly locked in the racks and verified that night after the company was dismissed, and to make a careful inspection of my ammunition and verify same the next morning.

Q. And it was in compliance with that order that you made the inspection the following morning of the rifles and the ammunition?—A. Yes, sir. I believe Major Penrose also stated on giving me the order that he was sure no men of his command had done this shooting and he wanted to prove it beyond a doubt.

Q. That's your best recollection of what he said at the time, or about the time he gave you that order?—A. Yes, sir; that's my recollection of it.

Q. Then your inspection the following morning was made with the object of determining whether any of your rifles had been fired?—A. Yes, sir; it was.

Q. What was the result of that inspection?—A. I believed that no rifles in the company had been fired.

Q. That was your best judgment after a careful examination of these rifles?—A. Yes, sir.

Q. Did you have any rifles at all about which you had a sus-

picion?—A. There were none about which I had a suspicion in my own mind. There were six or seven rifles that were not particularly clean and I had the men that carried these rifles fall out and form in a squad on the right of the company, my intention being to make a more minute inspection of these pieces later.

Q. Did you make a personal and more minute inspection of these later?—A. No, sir; about the time I finished my first inspection Major Penrose came along, and as it was time for me to relieve C Company with my company on guard I turned over these seven men to Major Penrose and Captain Lyon for this inspection and marched my company out to relieve C Company on guard.

Q. You did not take those six or seven men whose guns were not as clean as you liked on guard with you at that time to relieve C Company?—A. No, sir; I left them with Major Penrose.

Q. Do you know of your own knowledge whether they were carefully inspected at this time, or minutely inspected, as you expressed it?—A. I was not present, so I do not know of my own knowledge.

Q. What report, if any, did you make to Major Penrose about the condition of your guns? Did you make a written report?—A. No, sir; I think I made a verbal report in which I stated to the major that I had found no pieces that I believed had been fired. I told him that the seven men I had formed in a squad on the right of the company, that their pieces were not particularly clean and I intended making a more careful test with them.

Q. Was this before or after you started out to relieve C Company?—A. It was before.

Q. Did you receive any instructions from Major Penrose at that time when you made this report?—A. It is my recollection that I asked him and Captain Lyon, who was present, to make this inspection or to be present while I made it, and remember turning the men over to the major and Captain Lyon to make this inspection while I posted my company.

Q. Did you get a specific order at this time from Major Penrose to post your company?—A. I do not recollect the exact conversation, but my recollection of the case is that I was told to post my company and the Major and Captain Lyon could go on with this inspection.

Q. C Company had been on guard since the night before?—A. Yes, sir.

Q. Had C Company been to breakfast?—A. I believe not.

Q. Do you recollect whether that had anything to do with your relieving them at once or not?—A. I remember that the necessity for my relieving them was very urgent. They had been on guard the greater part of the night, and I am pretty sure had had no breakfast.

Q. You don't remember—or do you remember—what time this was?—A. I believe this was a little after 6 o'clock a. m.

Q. About how much time did you occupy in this inspection of your pieces?—A. I think I took about fifteen minutes.

Q. You looked carefully through the bore of each gun?—A. Yes, sir; I examined only the bore and the chamber.

Q. Did you have a good light on the chamber and reflected in the bore when you made this examination of each of them?—A. Yes, sir; I had a good light; I remember that the sun rose while I was making my inspection.

Q. And every gun that wasn't perfectly clean the owner of it was placed in this squad, was he?—A. Yes, sir.

Q. You investigated and took the statement of every man in your company, did you, under the orders from Major Penrose?—A. Yes, sir.

Q. You did this personally?—A. Yes, sir; I did.

Q. You did it separately and apart from each of the others?—A. Yes, sir; I called each man in the orderly room by himself.

Q. What was the nature of the efforts you made to get at the full facts from these men?—A. I questioned them and asked them to tell me, beginning at the beginning, what they did and saw and heard on the night of August 13 after being wakened. I asked them to tell of anything that they knew that would tend to show that the soldiers—any of the soldiers—had a grievance against certain persons in Brownsville. Asked them if they knew or suspected any soldier of having been out that night, and other questions of a similar nature that I can not recall at this moment.

Q. How long did you keep up this investigation, taking the statements of these noncommissioned officers and men of your company?—A. I think it extended over about a day and a half.

Q. Did you take down the statement of each man?—A. Yes, sir; I did.

Q. In writing?—A. In writing.

Q. You stated that you cautioned them to tell you the truth; that they would have to swear to it, probably?—A. Yes, sir; I told them that would probably be put in the form of an affidavit and they would have to swear to these written statements.

Q. So, in so far as you were able by virtue of your position simply as an officer, you attempted to surround their statements with the sanctity of an oath?—A. Yes, sir; I tried to impress upon them that this was being written down and they would probably have to swear to all they said.

Q. Did you at any time during this investigation have in your mind the idea of shielding the people or bringing out the facts, or what was your frame of mind; what was your attitude in which you took up this investigation?—A. My attitude was to find out, if possible, whether any soldier or soldiers had been implicated in the crime.

Q. Did you make every honest effort to find out whether or not your men or any of them had been implicated or could have been implicated in that shooting the night of the 13th and 14th of August?—A. Yes, sir; I made every effort I could think of.

Q. Did you report the results of your efforts to Major Penrose?—A. Yes, sir.

Q. Did you keep him fully in touch with everything that was developed, as far as you could—everything of importance?—A. Yes, sir.

At this point, it being 12 o'clock m., the court adjourned to meet at 10 o'clock Monday morning, February 25, 1907.

CHAS. E. HAY, Jr.,
Captain, Acting Judge-Advocate, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., February 25, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocate. The accused, his counsels, and the reporter were also present.

Reading of the proceedings of February 23, 1907, was dispensed with.

Lieutenant LAWRASON was reminded that he was still under oath.

CROSS-EXAMINATION CONTINUED.

Q. Mr. Lawrason, on Saturday when the court adjourned we were investigating your examination and inspection of the company. You testified that you made a report to Major Penrose that none of your guns gave evidence of being fired, but that certain ones, about seven, had been placed aside because they indicated dirt. What time was it you made this report to Major Penrose?—A. Before marching my company out to relieve C Company.

Q. And this was about what time of day?—A. Shortly after 6 o'clock a. m.

Q. Did you subsequently make a report of any kind to Major Penrose as to the result of your inspection of the ammunition?—A. Yes, sir; I believe in the neighborhood of 9 o'clock that morning I reported the result of my inspection of the ammunition to Major Penrose.

Q. What did you report to Major Penrose at that time, as near as you can recall it?—A. As near as I can recall it I reported to Major Penrose that my ammunition checked up all right; that the only issue of ammunition that had been made while the company was at Brownsville, with the exception of that issued on the night of August 13, was some that had been issued to Artificer Jones for his use at the rifle competition.

Q. And this was subsequently turned in to the company you say?—A. Yes, sir; on his return when he rejoined the company at Fort Reno, Okla.

Q. Did you at any time subsequent to this report change that report in any way to Major Penrose?—A. No, sir; I do not remember changing this report.

Q. Now, as a result of this examination of the men, what became of these papers that were written down by you; these written statements?—A. I kept the statement of each man in rough form and later, when at Fort Reno, had the form of affidavit made and took down each man's statement in more complete form, which statement was later sworn to by each man.

Q. Then you used this original written statement as a basis for the more complete statement that was sworn to?—A. Yes, sir.

REDIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Mr. Lawrason, you have said that the general direction of the first shooting you heard was toward the town of Brownsville; now,

with respect to B Company barracks, where was this sound?—A. I could not locate the firing from my room with respect to B Company barracks very well. The general idea I got was it came from the direction of the town.

Q. To the right or left of B Company?—A. As B Company is about in the middle, I should say from B Company.

Q. In the general direction of B Company barracks toward town?

By counsel for accused:

In this connection, may it please the court, I wish to say the judge-advocate keeps using the word "toward," and the witness distinctly said, "Shooting from the town."

At request of the court, the redirect examination was then read over, and witness then answered last question, as follows:

A. No more in the direction of B Company barracks than C Company barracks or D Company barracks. I could not locate the sound that definitely.

Q. You say that the sound of some shots or previous shots aroused you?—A. Yes, sir.

Q. Do you think firing had been going on before you came to a state of complete consciousness?—A. I think it had been, sir.

Q. Can you give any idea for about how long a time?—A. No, sir; I can not.

Q. You state that you found your company being formed by a junior noncommissioned officer. What grade had this noncommissioned officer?—A. He was the senior corporal.

Q. How do you account for the absence of the other noncommissioned officers senior to him?—A. The first sergeant had not yet arrived from his quarters. The commander of the guard was a sergeant from this company and at the guardhouse; the noncommissioned officer in charge of quarters was on sick report—that is, marked sick in quarters—and he came no farther down than the porch; he had been giving out the arms, and the other two—I think there were two sergeants besides that who had not yet reached the company. This corporal was the senior noncommissioned officer present with the company when I reached it.

Q. Is it customary for B Company to be thus left with only junior noncommissioned officers present?—A. I do not think it is customary for the company to turn out under such conditions.

Q. How many noncommissioned officers, and what rank, habitually slept in the quarters?—A. As I recollect it, four sergeants. I do not recall the exact number of corporals; I believe there were five at this time.

Q. I believe you stated that you saw Major Penrose in the vicinity of Company B parade ground, although he was not on Company B parade ground.—A. Yes, sir. I do not recollect his exact location; I think he passed me as I was about to join my company.

Q. About how far away from him were you?—A. As I recollect it I passed within 2 or 3 feet of him.

Q. How do you know he then remained in the vicinity?—A. I do not know that he remained in the vicinity of B Company throughout the entire roll call. I heard his voice several times; I could not see him.

Q. In answer to a question, were you aware of the state of feeling existing toward the men of the command on August 13, you replied, "I am not sure what the state of feeling was; I knew of no feeling on the part of the soldiers as a body against the townspeople, or of the townspeople as a body against the soldiers." Now, tell us if you knew of any feeling of any particular soldier or group of soldiers against any person or persons in the town.—A. No, sir; I knew of my own knowledge of no feeling of any particular soldier or group of soldiers against persons in the town.

Q. Tell us whether you knew of any feeling on the part of any person or group of persons in town against any particular soldier or soldiers.—A. No, sir; of my own knowledge I knew of no such feeling on the part of any particular person or group of persons in town.

Q. Were you aware of the so-called Tate incident?—A. Yes, sir; I heard of it in the afternoon of August 13.

Q. When did the Tate incident occur?—A. I believe it occurred on the night before, on the night of August 12.

Q. What was the Tate incident?—A. It was reported that a soldier had mistreated or insulted the wife of a citizen of Brownsville.

Q. Did you ever hear of the so-called Evans incident?—A. Yes, sir; the Evans incident was what I was thinking of.

Q. Let us go back to the Tate incident again. Do you know what the Tate incident was?—A. Yes, sir; the Tate incident was—it was reported that a soldier had brushed against some ladies on the sidewalk, I believe, and that he had been knocked down by a Mr. Tate, of Brownsville.

Q. Did not this engender a certain feeling of resentment in the command against Tate?—A. Not that I know of, sir.

Q. Isn't it rather unusual, in your experience with soldiers, that such an event would not create a certain feeling of resentment?—A. I think it would probably create resentment on the part of the soldier who was injured or, perhaps, some of his friends. I had seen no manifestation of any feeling by the soldier or any of his friends against persons in Brownsville.

Q. When you heard these first shots on the night of August 13, did the Tate or Evans incident rise to your mind?—A. I thought of the Evans incident and imagined that probably some tough persons in town, perhaps under the influence of liquor, had fired on the soldiers' barracks.

Q. Did you hear that there were separate bars put up in the saloons for members of the Twenty-fifth Infantry?—A. I had heard that soldiers had——

By counsel for accused:

I would like to ask if the judge-advocate is going into all these incidents with this witness now; and if so, why he didn't do so in direct examination, so we might have had a chance to cross-examine? It is certainly now direct examination. I want to say we have no objection to this being gone into, but as there are a number of witnesses we think it but fair that he be instructed to bring out everything he knows of from these witnesses in direct examination if he purposes doing so. We recognize, may it please the court, in our practice, in order to save time and recalling of the witnesses, that this is sometimes permissible, but in a case of this kind, where the judge-advocate has had ample time for preparation and where he has known all the facts and thrashed them

over for two or three weeks, we think we are entitled to have him go into all these things, if he purposes to make him his witness for that, on his original examination. And, as I say, while we don't make any objection directly to this, we want to know if he is going into it; and if so, and that is going to be his practice, we ask the court to instruct that with future witnesses he do that on the direct examination.

By the judge-advocate:

In reply to the counsel we have this to say: That counsel informed the court on Saturday, I believe, that it was his intention to wander far from the record, and, second, that he informed the court of his intention to recall this witness as a witness for the defense, and I therefore claim it as a matter of fairness and justice to the prosecution that the same latitude be allowed the prosecution in redirect as has been allowed the defense on cross examination, and it is easy to see that, while this witness is not especially hostile to the prosecution, he is certainly a fast and willing witness for the defense.

By counsel for accused:

I request that first part of the judge-advocate's reply be reread. (First three lines of judge-advocate's reply were read over.) That's the part I take exception to. No such statement—and I refer to the record—has been made. If so, I certainly was dreaming, and I have not been in that state of mind, to my knowledge, thus far. I did say that I purposed going into everything on the cross-examination that I legitimately could, and I did say, and I repeat, that we are going to put this witness on the stand; and I did say, and I repeat, that we have no desire to keep from the court anything this witness knows; and I now say, and I say it with emphasis, that in so far as I can detect there is no unwillingness on the part of this witness to testify to anything either of us has asked. He is not, and I don't believe in any fair-minded way, can be classed as an unwilling witness, and I repeat again that, while we make no objection to the judge-advocate going into anything he wishes to, we do object to his opening up in this way, and we do request that he be directed to carry out his examination in the recognized form, so as to give us notice on what we are to cross-examine, and we are entitled to that.

The accused, his counsels, the witness, the reporter, and the judge-advocate then withdrew and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce that the court declines to instruct the judge-advocate as requested by counsel for defense.

(The question was then repeated to witness, and his incomplete answer read, as follows: "I had heard that soldiers had"——)

A. Been made to drink at separate bars, and that a new saloon had been started by an ex-soldier and supplied with liquor by one of the saloon men in town.

Q. Did the placing of these separate bars create any ill feeling in the command?—A. I believe not in the command as a whole.

Q. Did you hear any mutterings of discontent among any portion of the command?—A. No, sir; I did not.

Q. You spoke, in your direct examination, of a sentinel whose post was about B Company barracks. Will you tell us how much territory this post covers?—A. The sentinel walked around the four sets of barracks, leaving them to the left; his beat extended along the walk in front of them and around behind.

Q. Was the beat the same on the night of the 13th as on the other nights?—A. I believe it was.

Q. Were any extra sentinels added on the day or night of the 13th, to your knowledge?—A. I do not believe there were any extra sentinels added.

Q. You have previously stated that passes were ordered revoked after retreat, and you were told to send out after men in town and

have them notified to return to the post. What precautions were taken in your company to see that men did not later return to town?—A. The first sergeant and noncommissioned officer in charge of quarters, as well as the men themselves, knew that no men would be allowed in town that night. I had no guard placed in quarters or took no steps in that direction to prevent men from leaving them.

Q. I think you said your first sergeant didn't sleep in barracks?—A. No, sir; he slept in a set of noncommissioned officers' quarters.

Q. Have you ever been on the target range?—A. Yes, sir; I have.

Q. Ever heard small arms discharged there?—A. Yes, sir.

Q. What kinds?—A. The Krag rifle; the Springfield rifle, model 1903, and the Colt revolver, caliber .38.

Q. Did the revolvers and rifles make the same sound?—A. No, sir; they made different sounds.

Q. You could readily detect that difference, could you?—A. I believe in most instances I could, especially if I was near them.

Q. If you could detect it there, could you not have detected by the sounds whether there was revolver firing mixed with the rifle firing on the night of the 13th?—A. The conditions were somewhat different on the night of the 13th. I recollect hearing no revolver shots, or noticed none.

Q. Did the rifle fire that you heard on August 13 sound in any manner similar to the rifle fire on the target range?—A. Yes, sir; I believed I heard rifles being fired at the time.

Q. And it was similar to the rifle fire you had heard on the target range?—A. Yes, sir.

Q. You have testified that you did not know how the men got their arms from the arm racks. Who kept the key to the arm racks habitually?—A. The noncommissioned officer in charge of quarters usually kept these keys.

Q. I take it he was a different man every day?—A. Yes, sir; he was.

Q. And the key was turned over by him to his successor?—A. Yes, sir.

Q. It was never turned over to the company commander?—A. No, sir.

Q. Did you examine the barracks of B Company the following day, August 14, for bullet marks?—A. Yes, sir; I examined them some time the next day.

Q. With what result?—A. I found no bullet marks.

Q. Did you have an official conversation with Major Blocksom after the 13th of August concerning the events of that night?—A. Yes, sir; I had a short conversation with Major Blocksom.

Q. Did Major Blocksom tell you anything about the path of certain bullets which had been seen in a house in the neighborhood?—A. Yes, sir; he mentioned to me that he had examined the scars on a frame of a window made by bullets.

Q. In what house?—A. In a house in Brownsville.

Q. Do you know whose house it was?—A. I do not remember.

By counsel for accused:

I would like to ask the judge-advocate the purpose of this examination. It is certainly not to clear up any matters that have been developed in the cross-examination. It relates to a conversation with an outside party and the witness at which the accused was not present, and, unless it has some clear purpose which makes it admissible, I object to the question.

By the judge-advocate:

My reply will be the same as previously made to an objection by the counsel, namely, that I claim it as a matter of justice and fairness to be allowed to go into matters which perhaps have not been touched on exactly in previous examination. The defense has surprised me a little by its method of cross-examination, and for this reason I will have to go a little outside of what has been touched upon by the direct and by the cross examination recently .

By counsel for accused:

The explanation of the judge-advocate does not clear up the point. The question is objectionable on that ground; also objectionable on the ground that it is a matter of conversation between the witness and an outside party, to which the accused had not the privilege of being present. It has no direct connection with any previous testimony of the witness, and, unless it has some purpose which makes it admissible and the judge-advocate can explain that purpose, we object to the question. It is a form of hearsay examination.

The accused, his counsels, the witness, the reporter, and the judge-advocate then withdrew and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce the decision that the objection is sustained as tending to introduce hearsay evidence—remarks not made in the presence of accused. In connection with this objection the following remarks of counsel for defense are read:

"May it please the court, we think it is but fair to announce at this stage of the proceedings, while this first real military witness is on the stand, that we propose, on cross-examination, going into everything that we can legitimately go into on cross-examination and try to our utmost to place before you everything, in so far as we can, he and each of them saw that night. It is not our purpose or our desire to suppress anything or to limit the examination, either by the judge-advocate or on our own part, or, finally, and more important still, the examination on the part of the court, but we wish to say to you that we expect to place this and each of the other military witnesses on the stand as witnesses for the defense when the proper time comes, and bring out special things that perhaps will not be brought out here, and our purpose in making this announcement is to advise you so you can feel certain you will have further opportunity at a later stage of the proceeding to go into things that the judge-advocate may not have seen fit to bring out at this time."

It is the intention of the court to allow, and the court has allowed, the widest latitude in the examination of the witnesses that the rules for procedure for military law permit, and counsel are cautioned not to consume time unnecessarily by disregarding this ruling of the court.

By the counsel:

We wish to say to the court that we do not intend any such thing. Our purpose in making that statement, which is correctly read to us, was to be absolutely fair, and we had in mind, and we wish the court to know we had in mind at that time, that while we wanted this fullest examination possible, we did not waive, nor do we waive now, any rights of orderly and regular procedure, and the purpose was so that, as we announced, we would not depart from what was proper on cross-examination. Nor did we intend this morning to ask that this judge-advocate be limited in his examination of this particular witness, but we did ask, and we regret that the court declined to give the instruction, that with the knowledge he now has that in so far as practicable or possible he should treat the other military witnesses and bring out everything practicable, so we would have the advantage of the knowledge of what we were to cross-examine him on legitimately at that time, and our further purpose was so that the court would not feel it had to go outside of the direct or cross-examination at this stage in order to bring out certain points that had not been covered either by the judge-advocate or the defense. That was our purpose.

By assistant counsel:

I would like to ask if that decision of the court covers all questions relating to conversation between Major Blocksom and the witness? If it does so cover these questions, I request that so much of the testimony of the witness as relates to that conversation may not be considered in evidence.

By the president of the court:

The decision of the court, of course, refers to the objection to the particular question.

By assistant counsel:

May it please the court, I request that so much of the testimony of this witness as relates to conversation had by him with Major Blocksom subsequent to August 13, 1906, at which the accused was not present, be not considered in evidence by the court—struck out of the record.

(At request of the court, the questions and answers referred to, page 1100 [519], were read over.)

By the judge-advocate:

I have nothing to reply. I will abide by the decision of the court.

The accused, his counsels, the witness, the reporter, and the judge-advocate then withdrew and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce that the request of counsel for the accused is not acceded to.

Q. Were there any lights in the portion of the reservation near your quarters, where you met Private Conn?—A. It is my recollection that generally in the evening there was a gas lamp or oil lamp, I do not recall which. I believe it had gone out by 12 o'clock on the night of August 13, because I do not remember seeing the light when I came out of my quarters.

Q. Where was this lamp or light located?—A. If I recollect correctly, it was by the sidewalk almost in front of my quarters.

Q. That is, the sidewalk running in front of the line of officers' quarters?—A. Yes, sir.

Q. At what gait were you and he moving when you saw him?—A. You mean Private Conn and myself?

Q. Yes.—A. I was moving at a double time.

Q. And was he also?—A. Yes, sir; he was running also.

Q. Were you on the lookout for anyone?—A. No, sir; I was not.

Q. Was this meeting sudden and unexpected?—A. It was, sir; he passed me a few feet in the dark before recognizing him.

Q. You stated it took you ten seconds to get from your quarters across the parade to B Company. Is that correct?—A. I think I said about ten seconds.

Q. Do you know how wide that parade ground is?—A. I believe it to be less than 100 yards.

Q. If you were told the parade ground was 175 yards across, would you still maintain you crossed it in ten seconds?—A. No, sir; I would not.

Q. When Major Penrose gave you instructions to have your arms inspected as soon as it was light enough to permit, what reason did he give for wanting the arms of your company inspected?—A. He stated that it had been reported to him that members of the command had been implicated in the firing in the town, and he wished to be sure and prove beyond a doubt that none of the men had been implicated in this.

Q. At the time the roll was first called you say you know that the men were all present but three, and that you knew this because you heard the men answer to their names. Did all but these three men

answer?—A. All but these three and the men who were absent properly on guard and sick in hospital.

Q. When these men who were on guard and sick in hospital failed to answer their names you recognized at once, did you, that they were absent with authority, or were you told that at some later time?—A. I do not believe their names were called.

Q. The entire roll, then, was not called?—A. It was the custom of the first sergeant to make out a roll each day to be called that day, which carried the men on guard marked as such, the men in hospital marked as such, and any authorized absentees.

Q. And what did he do with this list? I think you stated he was not in the barracks at this time.—A. I suppose he carried it in his pocket, sir.

Q. Then how did the corporal happen to have it, if the first sergeant was not there?—A. The corporal did not call this roll.

Q. Who called the roll?—A. The first sergeant of the company.

Q. Now, you said yesterday that you had secured a copy of the service calls that were in use at Fort Brown about August 13. At whose suggestion did you get that?

By counsel for accused:

I will state to the court, for a matter of record, that it was at the suggestion of counsel, and counsel attempted to make that clear to the court by stating he wished to place beyond any further question the exact times these roll calls did appear, and I want to go further and say that I suggested he go to the proper source for securing it, and it was at our suggestion and for the purpose as I stated to the court. I have no objection to the question being answered.

By the judge-advocate:

The explanation renders the question unnecessary.

Q. Do you know whether on the morning of August 14, following the events of the preceding night, the time of any of these calls was in any wise departed from?—A. I believe not.

Q. I believe you also stated that your company was almost at once taken to the wall. Is that correct? I have no desire to misquote you, but that's my recollection.—A. After the completion of the roll call; yes, sir.

Q. How long were your men held at the wall?—A. I do not recollect exactly how long.

Q. Approximately.—A. I should say about an hour or an hour and a half or two hours.

Q. In what formation were they kept?—A. They were deployed along the wall.

Q. With what interval, approximately?—A. Approximately 2 yards, I believe, sir.

Q. Could you see every man there all the time?—A. I could not see every man all the time.

Q. Did you leave the immediate vicinity of your company while the company was at the wall?—A. No, sir; I did not.

(Counsel here asked if witness understood the time that was referred to by the question. Counsel got impression morning of 14th was referred to.)

Q. Did the witness so understand the question?—A. No, sir; I understood it to be the time the company had been posted along the wall, just after the roll call.

Q. Was it dark or light where your men were along the wall?—A.

There was a lamp at the gate—the main gate. The other end of my company, as I remember it—that is, the end extending up to the rear of C Company barracks—were in the dark.

Q. So men could have cleaned their rifles without your observing them, could they, while they were at the wall?—A. Possibly, by leaving the other end of the company—that is, the dark end—while I happened to be at the end near the main gate.

Q. How are these new Springfield rifles cleaned? That is to say, with what implements?—A. In the butt of each rifle there is a thong or cord and a brush. In most instances the rifles are cleaned with a brass cleaning rod, I believe.

Q. But the cleaning can be done just as effectively with this thong and brush, can it?—A. I do not believe it can, sir.

Q. Do you know exactly to a round how much ammunition you had on the afternoon of August 13?—A. I do not know exactly to a round how much I had, sir.

Q. Did you know at that time? In other words, have you forgotten since?—A. No, sir; I did not know to a round. I believe that I knew to within a few clips.

Q. Did you count the ammunition to a round the morning of the 14th?—A. Yes, sir; I did.

Q. And you say it checked up, as I understood you, exactly?—A. It checked up with my records, and I was satisfied that the ammunition was all accounted for.

Q. Did you have any ammunition in excess of your records?—A. I might have had at that time two or three clips in excess.

Q. And you also made a statement on Saturday, I believe, that most of the men were without ammunition when they fell in after the call to arms had been sounded.—A. Yes, sir.

Q. Didn't that appear strange to you when every man should have had 10 or 20 rounds each?—A. No, sir; it did not. I think I stated, in connection with that question, the rather unusual conditions under which the company was formed.

Q. Now, you also stated it was necessary to break open an original package of this ammunition to distribute it because these men had none. Couldn't they have been sent back into the barracks just as easily for their 10 or 20 rounds as to have this original package broken open?—A. No, sir. I had just formed the company with considerable difficulty, and thought I could get them properly equipped and in their proper places along the wall quicker by making an issue of ammunition to them while formed than by dismissing them and sending them rambling through barracks again.

Q. You were not certain on cross-examination whether the men had 10 or 20 rounds of ammunition in their possession. Were you certain that night?—A. No, sir; I was not; but I was certain the next morning.

Q. Might not the accountability have been 20 and you have checked up as 10?—A. I think not, sir.

Q. You sent certain men back into the barracks for their arms. How long did these men remain in the barracks before they returned with their arms?—A. A very short space of time, as I recollect it. I do not believe these men took any pains to find their own rifles. The racks were at that time unlocked, and they went upstairs and got their rifles and came right down.

Q. Were the arms of the men sick in hospital inspected on the morning of the 14th?—A. Yes, sir.

Q. Now, I think you stated on cross-examination that after the men returned from the wall their arms were locked in the arm racks and there remained until inspected at daylight. Who kept the key during the night?—A. It is my recollection that the keys were in the hands of the noncommissioned officer in charge of quarters. The first sergeant might have had them; I do not recall now.

Q. You did not?—A. No, sir; I did not.

Q. You stated to the court that you were practically positive that all the men were present, except those three you have spoken of and those sick in hospital and on guard, because you recognized their voices when they answered to their names. Do you mean to tell the court that you could distinguish the vocal characteristics of some 56 different men so as to be able to identify them in the dark, although they only spoke one word, and that was "Here?"—A. As I recollect it there were only about 48 men in ranks.

Q. Then you recognized each of these 48 men by their voices when they said "Here?"—A. Almost every one of them, I think; yes, sir.

Q. You testified also that you believed at that time—that is to say, at the early part of the affair on the night of the 13th—that you believed the barracks were being fired into from the town.—A. Yes, sir.

Q. Are you still of that belief?

To this question counsel objected as follows:

I object to that question, may it please the court. It is a matter of opinion and has nothing to do with this question at issue at all. I object to it; it is strongly improper to ask for the opinion of the witness at this present time; it has no connection with this testimony to ascertain the facts which are in issue in this case.

By the judge-advocate:

This point was brought out by the defense on cross-examination, that witness believed the barracks were being fired into. I want to know if he is still of that belief, and if not, when he changed his mind. I think the question is perfectly legitimate.

The accused, his counsels, the witness, the reporter, and the judge-advocate then withdrew and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce the decision that the objection be not sustained. The question will be answered.

(Question was then repeated.)

A. I have changed my mind several times on this point. The next day I examined the barracks, and finding no bullet holes in them or scars of any bullets, I came to the conclusion that the barracks had not been fired into.

Q. What is now your honest belief?

The court then took a recess until 2 o'clock p. m.; at which hour the members of the court, the judge-advocate, the accused, his counsel, and the reporter resumed their seats.

The witness, Second Lieut. GEORGE C. LAWRASON, was reminded that he was still under oath, and the

RE-DIRECT EXAMINATION CONTINUED.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. I believe you stated this morning, Mr. Lawrason, it was your belief that the barracks had not been fired into?—A. Yes, sir.

To this question the associate counsel for the accused objected as follows:

May it please the court, if the judge-advocate has not a copy of the record of this morning's proceedings, he might use this. The last question that was asked the witness is unanswered.

The judge-advocate:

I was not aware of that fact; I haven't a copy.

Q. I will read you the last question and answer at this morning's session: "Q. You testified also that you believed at that time—that is to say, at the early part of the firing on the night of August 13, that you believed the barracks were being fired into from the town?—A. Yes, sir. Q. Are you still of that belief?" Then after the closing of the court and reopening of same, the question was repeated: "A. I have changed my mind several times on this point. The next day I examined the barracks, and finding no bullet holes in them or scars of any bullets, I came to the conclusion that the barracks had not been fired into." The next question was: "Q. What is now your honest belief?"

Associate counsel for the accused:

May it please the court, I object to this question on the ground that it calls for an expression of opinion on the part of this witness. In connection with this objection I want to read the rules of evidence that bear on that objection from McKelvey on Evidence, the general rule as to opinion evidence. (Here counsel read from McKelvey on Evidence, page 172, section 123.) And also in this connection Wharton on Evidence. (Here counsel read from Wharton on Evidence, page 402, section 460.) In answer to a summary objection by the defense the judge-advocate replied this morning that in cross-examination the defense had asked this witness a question which involved his opinion. May it please the court, we contend that that question was indirectly brought out in examination of the witness on cross-examination, but whether directly or indirectly made by the defense or the prosecution, and it was a question of opinion, it comes clearly within this rule read from McKelvey on Evidence. If any questions were asked this witness by the prosecution or defense as to a state of facts when those facts come within his knowledge at practically the same instant of time, that question is purely one not covered by the rule of opinions and is one that is covered by the rule of exceptions; but the present question from the judge-advocate was not from a variety of facts that came into his possession at one and the same time but after a lapse of time and formed from facts that continue throughout that period of time. It is not our purpose to object to any of these questions on purely technical grounds, and at no time have we availed ourselves of the rules of evidence. We have objected for technical reasons at a time that it has seemed to us that the interests of the accused were not being properly safeguarded, and the judge-advocate has left the rules of evidence, and we have availed ourselves of these rules. This matter came up this morning once on hearsay evidence and we had a clear-defined idea of why the judge-advocate brought in that evidence, and we requested him to define his object in bringing it out, and the court is on record of having him state his purpose he had in mind, and the court ruled out particular portions we were objecting to. He now asks him for his opinion upon an allegation in the specifications on which Major Penrose is being tried, and it is no more the province of this witness to give his opinion on that allegation than it would be to give his opinion on the entire specification. If this

question is permitted, the judge-advocate may properly ask this accused his opinion upon the entire specification, and the ruling of the court must be the same on these two questions to be consistent. It opens up a way for the judge-advocate to introduce before this court a number of witnesses whose opinions he knows to be framed in accordance with the wishes of the prosecution. We here wish to say that we are not afraid for this witness to answer this question. We know that if he does answer it fully it will revert to the benefit of the defense, but we object to it; for if allowed, the prosecution in the case of this witness will make use of it with other witnesses, and I say to present to the court matters of opinions dealing with an important phase of the prosecution, those opinions must have some influence with the court, and I maintain that it is the custom for the court to frame their own opinion upon this specification and upon each and every allegation contained in it. And, furthermore, the time that is contained in this allegation or covered by this allegation is on August 13 and 14, 1906, and in no sense is the present time concerned in those specifications.

The judge-advocate:

The judge-advocate has no remarks to make in reply to remarks of counsel.

Associate counsel for the accused:

May it please the court, in this connection we again ask that the court strike out those answers in which the opinion of the witness is asked for. Those questions just preceding this last question objected to, for the reasons as have been stated.

The judge-advocate:

In reply to the closing remarks of counsel, I will call the attention of the court to the fact, of which they are doubtless well aware, that the record of a court-martial should contain everything which transpires during the session of the court-martial, and to strike out or remove from the record anything which has been said or done would manifestly impair the correctness of the record.

Associate counsel for the accused:

May it please the court, we don't wish to make any point of that at all; we simply wish that this testimony that is in evidence be not considered as evidence.

The judge-advocate:

That places an entirely different aspect on the case, if the court please.

The presiding officer:

It is requested that you specify more clearly what you would like to have not made a matter of evidence.

Associate counsel for the accused (reading from morning's proceedings):

"Q. Are you still of that belief?—A." the answer to the same, and "Q. What is now your honest belief?" No answer to that.

The accused, his counsel, the reporter, and the judge-advocate withdrew and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce the decision that the objection is sustained. The question will not be answered. That the court declines to accede to request of counsel for the defense with reference to the answers to the preceding questions.

Q. You have spoken about firing and cleaning a Krag-Jörgensen rifle at the Military Academy. Did that Krag rifle burn black or smokeless powder?—A. It burned smokeless powder.

Q. Have you ever had occasion in hunting or otherwise to clean a rifle which had burned black powder?—A. Yes, sir; I think I have cleaned a hunting rifle that burned black powder.

Q. What was your experience—did it take longer to clean the rifle that had burned black powder than it did the one that burned smokeless powder?—A. As I recollect it, it used to take me quite a while to clean the rifle that I once owned that burned black powder. I used to let it go a little time between cleanings, which was one reason for this.

Q. Will you tell the court the names of the men—seven, I think you said there were—whose guns were not perfectly clean upon the morning of the 14th, and whom you had fall to one side?—A. I do not recollect the names of all of those men; I recollect one of them was Private Horn, of Company B; I believe another one was Private Allen, I think James Allen; another one, I believe, was Private William Anderson. I can not at present recall the names of the others of the seven.

Q. Of your own knowledge do you know whether or not these seven men ultimately passed the inspection satisfactorily to the officers who made the inspection?—A. I was not present and therefore do not know of my own knowledge.

RECROSS EXAMINATION.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. Do I understand that you had no fixed idea in your mind as to the location of that first firing you heard, with respect to any particular barracks?—A. No, sir; the impression that I got was that it was in the general direction of town.

Q. Mr. Lawrason, do you know where that new saloon was located that you referred to that was opened by a discharged soldier?—A. I do not, exactly; it was near the northeastern corner of the post.

Q. Do you remember accurately about the time that guard mounting was held the next day, Mr. Lawrason—that is, on August 14 last?—A. I do not remember accurately; I believe it was in the neighborhood of 9 o'clock; of this I am not sure.

Q. As a matter of fact, wasn't an entire company placed on guard on August 14, and thereafter as long as the battalion stayed there?—A. Yes, sir.

Q. When were these posts increased, then, speaking generally of the guard duty?—A. There was an organized system; in other words, a number of cossack posts established on the morning of August 14; how soon after my company turned in on that night or morning I do not know.

Q. Well, when you left that night, or when you turned in as you say, did or did not you leave an entire company on guard along this wall or fence on the northeast side of the reservation, extending around to about the corral?—A. Yes, sir; I left C Company established along this line; I do not know how far they extended, because my company hadn't been extended, if I recollect correctly, when I marched them in.

(The last answer was read by the reporter.)

Q. Then, from the time you were posted on the early morning of August 14 alongside of D Company, you had practically one of your companies on guard until you were relieved and went to El Reno; is that true?—A. Yes, sir; that is true.

Q. You have stated once or twice that the men of your company had either 10 or 20 rounds in their personal possession and were charged with them. Now, when you made this check up of the ammunition that you testified to was this check up made with the knowledge of what the record showed, and did it check up with the records at that time?—A. Yes, sir; I consulted my records and shipping invoices.

Q. By records do you refer to charges made against the men on the company books?—A. Yes, sir; the retained ordnance return and the book kept in the ordnance storeroom on which the men were charged with articles of ordnance that they were equipped with—supplied with.

Q. And in your check up you found that the men had the ammunition and other ordnance equipments that they were charged with? Is that what we understand you?—A. Yes, sir.

Q. Did you know at the time you were making this inspection the number of rounds that each man was supposed to have?—A. Yes, sir; that was on the ordnance book.

QUESTIONS BY THE COURT.

Q. Do you know whether any of the men of Company B had any extra ammunition on the night of August 13?—A. No, sir; they had none that I knew of.

Q. Could the men get possession of ammunition without the knowledge of the company commander?—A. They could not have since being at Brownsville, Tex.

Q. Do you know who had the gun-rack key of Company B on the night of August 13?—A. Sergt. George Jackson, of Company B, Twenty-fifth Infantry, who was at that time noncommissioned officer in charge of quarters.

Q. Do you know where the key was kept?—A. I believe that he kept it in his pocket; he is supposed to keep the keys with him at all times when noncommissioned officer in charge of quarters.

Q. Did you run a rag through the barrels to see whether there were powder stains or not?—A. No, sir; I did not.

Q. Do you know whether anyone passed a rag through the barrels of all of the rifles of the company to discover powder stains?—A. Not of my own knowledge. I believe that Major Penrose and Captain Lyon passed rags through those pieces belonging to the seven men that I turned over to them.

Q. At about what hour did Major Penrose instruct you to inspect the arms of your company?—A. As soon as it was light enough to see thoroughly—properly.

(The reporter reads last question and answer.)

Q. Did you send anyone to find Elmer Brown? If so, with what result?—A. Yes, sir; I sent Corporal Wade Harris, of Company B——

Q. At what hour did Major Penrose give you these instructions?—A. I didn't finish answering the last question. Will you read the question over, please?

Q. That last question should read a little different——

The judge-advocate:

If the court please, I don't think he has quite finished answering that last question.

A. The question was if I sent anyone to find Private Elmer Brown; and if so, what was the result? I sent Corporal Wade Harris to find him, and he returned and reported that he was at the corral with the horses.

Q. At what hour did Major Penrose give you these instructions to inspect the guns?—A. As near as I can recollect, about 2 a. m., August 14.

Q. What did you say had become of the 10 or 20 rounds of ammunition each man in the company had in his possession on the 13th of August?—A. I do not recollect answering this question. On the morning of August 14, when I checked up the ammunition, each man had his 10 or 20 rounds plus what was issued to him on the night before. The excess was turned in.

Q. Please state where the two sergeants were whom you did not account for during the formation of Company B on their parade the night of the 13th of August.—A. One that I did not account for was the quartermaster-sergeant; he was present in the file closers and later making the issue of ammunition. I think the only other sergeant that I didn't account for was Sergeant Luther T. Thornton, of Company B, who was properly accounted for that night. I do not remember at this moment his exact whereabouts with the company.

Q. Are keys to the company arm racks in duplicate; and if so, where were the duplicate keys on August 13 and 14, 1906?—A. I believe not. Each lock has one key on the bunch numbered with a number corresponding to the lock, and will unlock no other lock on the racks or any of the other racks.

Q. Were you fully aware that the rifles, when placed in the arm racks after the shooting, were to remain there secure until their inspection the following morning?—A. I believed that they would remain here—there—secure until the following morning.

Q. Referring to the keys to the arm racks remaining in possession of company noncommissioned officers during the night of August 13–14, after the rifles were secured in the arm racks under your supervision, was it the duty of Major Penrose to specify details as to the carrying out of his order to attain the desired end, such as disposition of keys, etc., or was it your duty as company commander to have looked after such details?—A. I rather think it was my duty as company commander to have looked after such details.

Q. Referring to the privates who were fallen out by you on account of rifles not perfectly clean, were these men accustomed to keeping their rifles clean, in good order, or were they men careless in the care of their rifles?—A. I do not know that any of these men had a bad reputation as to the way they kept their rifles.

Q. How long was your company stationed along the wall the night of August 13 and 14?—A. In the neighborhood of two hours, I believe.

Q. Tell the court what you know of the Evans incident, August 13, 1906. When did you first hear of it? Describe fully where and how you got your information.—A. I first heard of it through a

conversation at the table at Mrs. Leahy's boarding house; I believe it was about 1 o'clock on the afternoon of August 13. I took my meals there. I do not recollect the exact conversation, but gathered that on the night before a soldier had insulted the wife of Mr. Evans, a citizen of Brownsville. I later heard that Mr. Evans, in company with the mayor of Brownsville, had called on Major Penrose and complained of the incident.

Q. How many classes of ball cartridges did you have with your company? If more than one, describe the difference between them and tell where the different kinds were kept.—A. There were two classes, I believe. Only one class was in the hands of the men; that is, the nickel-jacketed bullet—that is, the cartridge with nickel-jacketed bullet—and the regular service charge of powder. The other class, called I believe, the "guard ammunition," was kept in the company ordnance storeroom. This ammunition is loaded with a soft-lead bullet, no jacket, and a reduced powder charge, being meant for short-range purposes.

RECROSS-EXAMINATION.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. What time a day did you say it was that you heard this Evans incident discussed at the Leahy Hotel?—A. In the neighborhood of 1 o'clock on the afternoon of August 13.

Q. What time was it when you heard of the second part of the incident—to wit, it was reported to Major Penrose by Mr. Evans and the mayor, Doctor Combe?—A. It must have been very nearly 6 o'clock in the evening.

Q. Did you report this incident to Major Penrose previous to that time—the talk you had heard?—A. No, sir; I didn't think it was of sufficient importance to warrant my going to the Major and making a special report of it.

(The court here requested the reporter to read the following question and answer: "Q. Please state where the two sergeants were whom you did not account for during the formation of Company B on their parade the night of the 13th of August.—A. One that I did not account for was the quartermaster-sergeant; he was present in the file closers, and later making the issue of ammunition. I think the only other sergeant that I didn't account for was Sergt. Luther T. Thornton, of Company B, who was properly accounted for that night. I do not remember at this moment his exact whereabouts with the company.")

QUESTIONS BY ASSOCIATE COUNSEL FOR THE ACCUSED.

Q. Could you account for Sergeant Thornton's whereabouts if you had the opportunity of looking up the matter?—A. I could by questioning the first sergeant and possibly the company records of that night.

Q. His absence was authorized or not?—A. I believe he was present. If absent, his absence was authorized.

(The witness was then excused.)

The judge-advocate:

I will state for the benefit of the court and counsel that the witness Leonarda Sanchez, whose cross-examination was interrupted a few days ago, is now present without the court, and I would like to hear the pleasure of counsel as to continuing the cross-examination.

Counsel for the accused:

We can, if the court please, go ahead with her examination, but we have been so busy with these other witnesses that we have not had time to look up the matter. If the court prefers, we will go on with it, however.

The judge-advocate:

I have another witness without that we can go ahead with.

The court then took a recess at [until] 3.10 o'clock p. m., at which hour the members of the court, the judge-advocate, the accused, his counsel, and the reporter resumed their seats.

E. M. GEBHARDT, first sergeant Company F, Twenty-sixth United States Infantry, a witness for the prosecution, being duly sworn, testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please give your name, your rank, and your present station.—A. Earl M. Gebhardt; first sergeant Company F, Twenty-sixth Infantry.

Q. Do you know the accused? If so, state who he is.—A. Yes, sir; Major Penrose.

Q. How long have you been in the service?—A. Fifteen years, sir.

Q. Have you ever been in active service?—A. Yes, sir.

Q. Where and when?—A. Philippine Islands, 1898, 1899, 1900, 1901, 1902, and 1903.

Q. What arms have you used in your service?—A. The old Springfield carbine, caliber .45, and the Springfield long Tom—that is, the rifle—caliber .45, Krag-Jörgensen, and this new Springfield rifle.

Q. You are familiar with the present rifle used—the so-called Springfield rifle?—A. Yes, sir.

Q. Does the present Springfield rifle require an armrack in anywise different from that required for the Krag?—A. Yes, sir; requires a shorter one.

Q. What is the difference, if you can tell the court?—A. Well, the difference—I can't tell exactly how many inches it is—about 4 inches shorter, or something like that.

Q. Do you recognize this armrack here (indicating)?—A. Yes, sir.

Q. As what?—A. The new Springfield rack.

Q. Will you demonstrate to the court, if you can, by coming to this armrack, the difference between that and the Krag?—A. The only difference is the height of this part here (indicating lower pistol rack). That is the only difference that really counts. The difference between this part and the bottom (indicating same portion of pistol rack).

Q. Do you know what this is technically called—this portion of the rack?—A. No, sir.

Q. In the Krag-Jörgensen——

Counsel for the accused:

Won't you indicate in the record what you mean?

A. This is the pistol rack.

The judge-advocate:

The lower portion of the pistol rack is what he indicated.

Q. Now, with the Krag-Jörgensen, is it or not a fact that the lower portion of the pistol rack was perforated so that the barrel of the gun projected through or could be reached?—A. I don't remember, sir.

Q. Are these armracks provided with locks?—A. Yes, sir.

Q. And are the locks supplied from the same source, so far as you know, as the armracks?—A. Yes, sir.

Q. How many keys are there to these locks?—A. Two to each lock.

Q. In your company, who keeps these keys?—A. I keep one set and the noncommissioned officer in charge of quarters the other set.

Q. What is the character of this lock?—A. It is a Yale lock.

Q. How many locks are there on the armrack?—A. Two to each one.

Q. Are these locks different or not?—A. There are no two alike in the company.

Q. Where do you habitually keep the key that you carry?—A. Keep them locked up in the field desk.

Q. What kind of a lock has your field desk?—A. A common flat lock and a small flat key.

Q. What implements are generally used in cleaning a Springfield rifle?—A. Usually the brass cleaning rod is supplied by the Ordnance Department.

Q. Are any other implements ever used?—A. There is a thong and a wiping brush carried in the butt of the piece.

Q. Have you ever fired black powder in any of the various service rifles that you have just mentioned?—A. Yes, sir.

Q. What kind of powder is contained in the service cartridge today?—A. Smokeless powder.

Q. Is there any difference in the fouling of guns by the use of black and smokeless powders?—A. Yes, sir; there is quite a difference. The black powder fouls easy and is hard to clean; the smokeless it takes more shots to foul it and it is easier to clean on the start, but it takes three or four days to get it all out—to thoroughly clean the piece.

Q. About how many shots are required to foul the bore of the present rifle?—A. One will slightly foul it, but it will take 8 or 10 shots to foul it, so it is hard to clean.

Q. For the benefit of the court I wish you would open that gun rack as quietly as possible.

(Witness opens gun rack as requested.)

Q. Take out the gun.

(Witness removes gun as requested.)

Q. Now, I wish you would take the thong and brush, if there is such a thing in the rifle, and demonstrate to the court how quickly or how slowly signs of visible fouling could be removed?—A. It would be impossible to do it with this brush, Captain. The brush

doesn't do anything but just loosen it up. (Witness pulls brush through barrel of gun.)

Q. How long would it take to clean the bore of a rifle properly after having been fired, say, 10 to 20 times, with any implements?—A. At least twenty minutes.

Q. You couldn't remove the powder stains inside of twenty minutes, say?—A. It couldn't be; no, sir.

Q. Are the arm racks habitually fastened to the floor in the barracks with which you are familiar?—A. No, sir.

Q. How many men would it take to lift one of those arm racks and carry it out?—A. You mean empty or filled with rifles?

Q. Filled with rifles.—A. Well, sir, it holds 20 rifles and each rifle weighs about 7½ pounds; it would take at least two men.

Q. Have you no idea how much the rack itself weighs?—A. No, sir; I haven't. It isn't very heavy, though. I judge 50 pounds.

Q. Now, will you kindly look at that rifle in the rack again?—(Witness goes to arm rack as requested.)

Q. And demonstrate to the court whether or not it is possible to clean a rifle so located in a rack?—A. (Witness demonstrates with rack.) With a brass cleaning rod it would be possible to clean it by removing the bolt.

Q. And inserting the rod where?—A. In the breech. It would have to be cleaned from the breech; it could not be cleaned from the end of the barrel at all; and in that way it would be impossible to do so without leaving some at the top and the muzzle.

(The witness was then excused.)

The judge-advocate:

I have sent for another witness who hasn't arrived, so far as I know.

For the purpose of awaiting the arrival of another witness the court then took a recess until 3.30 o'clock p. m., at which time the members of the court, the judge-advocate, the accused, his counsel, and the reporter resumed their seats.

Capt. E. A. MACKLIN, Twenty-fifth United States Infantry, a witness for the prosecution, being duly sworn, testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please give your name, rank, and present station.—A. Edgar A. Macklin; captain, Twenty-fifth Infantry; Fort Reno, Okla.

Q. Do you know the accused? If so, state who he is.—A. I do; Maj. Charles W. Penrose, Twenty-fifth Infantry.

Associate counsel for the accused:

May it please the court, as counsel for Captain Macklin, it may be necessary during the course of his examination to object to questions that may be asked him, provided it comes clearly within his personal privilege; and while I do not expect to avail myself of this privilege, I think it proper and just to serve notice on the judge-advocate and to inform the court that certain questions will be liable to objection. I think it will be most infrequent, because it is the desire of this defense to open up as wide a latitude as is possible to the examination to which this witness is subjected.

The judge-advocate:

In response to the remarks of counsel, I will state to the court that I shall use every endeavor not to encroach upon what might be called dangerous ground with this witness; will stay as far from anything in which he is personally concerned as possible.

Q. Where were you stationed, Captain, during the month of August, 1906?—A. At Fort Brown, Tex.

Q. Where were you stationed on the 13th day of last August?—A. At Fort Brown.

Q. Who was in command of the post of Fort Brown upon this date?—A. Major Penrose.

Q. What official status did you have on the 13th day of last August?—A. I was commanding Company C, Twenty-fifth Infantry, and also officer of the day.

Q. When did you mount guard? That is to say, when did your tour as officer of the day commence on this date?—A. It commenced at about 10.30 in the morning.

Q. Do you remember the orders given you that morning by the commanding officer, as officer of the day?—A. There were no special orders given. I was directed to carry out the usual orders of the post.

Q. Were these orders, at any time before your tour as officer of the day ceased, modified or added to in any way whatsoever?—A. They were.

Q. In what respect, please?—A. No; the orders were not. I would like to withdraw that answer. They were not changed in any way.

Q. They were not changed in any way?—A. No, sir; the regular special orders were not changed.

Q. You got no special instructions?—A. I got the special instructions about a quarter to 6 that evening that all passes were withdrawn, and also, as company commander, I was instructed to send out and have all men of my company who were on pass return to the garrison.

Q. That order was given to you as company commander—that last part?—A. Yes, sir; I was also given a special order as officer of the day to send out three patrols to bring in all men of the command who might be in town and to notify all men who were out that all men of the command were to be in the quarters by 8 o'clock that night.

Q. Was the guard in any way increased during that day or during the night of August 13?—A. It was increased at about—the main guard was not increased in any way—but my company was placed on guard at about 2 o'clock the morning of August 14.

Q. For what reason, Captain?—A. It was on account of the shooting that had been in Brownsville a few hours before.

The judge-advocate:

May it please the court, unless the court desires urgently that I continue with the examination of this witness, I would like to have an opportunity to prepare a little bit more fully for his direct examination, as the court has probably seen that it was somewhat of a surprise that this witness was called by me this afternoon. I had two witnesses out there, and I thought the examination of these witnesses would consume the entire afternoon, and I haven't given as thorough attention to framing the questions on the direct examination of this witness as I would like, and if the court will grant this indulgence I would like to postpone this examination until to-morrow morning.

The court:

You have no witnesses on the outside?

The judge-advocate:

No, sir; and none that I know of that I can get immediately.

Counsel for the accused:

May it please the court, we don't arise for the purpose of interposing any objection to the request at all, but merely as a short explanation of our situation. We don't object to going into the details of officer of the day, and I don't know but what some of the questions of counsel—certainly those that refer to any allegation against Captain Macklin—may be objected to just as strenuously as those by the judge-advocate, but we don't understand that the judge-advocate is barred from going into the duties performed by Captain Macklin as officer of the day that night; it is only such as might, perhaps, raise a question of personal privilege covered by his specific charges.

The judge-advocate:

I think I understand the attitude of counsel perfectly.

The court then, at 4 o'clock p. m., adjourned to meet at 10 o'clock a. m., Tuesday, February 26, 1907.

CHAS. E. HAY, Jr.,
Captain and Judge-Advocate, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., February 26, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocate. The accused, his counsels, and the reporter were also present.

The reading of the proceedings of February 25 was dispensed with.

The counsel for the accused addressed the court as follows:

May it please the court: It is with extreme regret that I get up to request the indulgence of the court and ask for an adjournment until to-morrow morning. Our client, Major Penrose, is suffering from a sick headache, to which he is subject. He advises me that he is taking his usual remedy for it, and it is barely possible he will be able to listen to evidence by 2 o'clock this afternoon. We would prefer, however, that the court indulge us with an adjournment until to-morrow morning at the usual hour.

The court then, at 10.15 o'clock a. m., as requested by counsel for the defense, adjourned to meet at 10 o'clock a. m. February 27, 1907.

CHAS. E. HAY, Jr.,
Captain, Acting Judge-Advocate, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., February 27, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocate. The accused, his counsels, and the reporter were also present.

The reading of the proceedings of February 26 was dispensed with.

The judge-advocate then read the following order to the court:

SPECIAL ORDERS, No. 46. } HEADQUARTERS DEPARTMENT OF TEXAS, *San Antonio, Tex., February 26, 1907.*

4. First Lieut. Roger S. Fitch, First Cavalry, is detailed as assistant to the judge-advocate of the general court-martial convened by paragraph 2, Special Orders, No. 264, series of 1906, these headquarters, and will immediately report for duty to the judge-advocate of the court-martial.

By command of Brigadier-General McCaskey:

C. J. CRANE,
Lieutenant-Colonel, Military Secretary.

Lieutenant Fitch was then duly sworn by the president of the court.

Capt. E. A. MACKLIN, Twenty-fifth Infantry, was reminded that he was still under oath.

DIRECT EXAMINATION CONTINUED.

Q. You have stated that you were in command of Company C, Captain Macklin, on the night of August 13. Did you have occasion during this night to assume actual command of your company?—A. I did.

Q. Under what circumstances, please?—A. I did. I was directed by the commanding officer to take command of my company, after I reported to him at the main gate, or in the vicinity of the main gate. Also directed by him to take my company and place it in line of skirmishers extending from in rear of D Company quarters near the old gate of Fort Brown around as far as the quartermaster storehouse. This I did, and remained on guard at the main gate with the company during the rest of the night.

Q. About what hour did you report to the commanding officer?—A. At about 1.20.

Q. Did you receive any orders from the commanding officer to inspect your arms on this night?—A. I did. I was ordered to inspect the arms of my company as soon as it was light enough to see them.

Q. Did you do so?—A. I did.

Q. With what result?—A. They were all clean to my entire satisfaction, showing no signs of powder.

Q. At what hour did you make this inspection?—A. Between 6 and 6.30; possibly a few minutes earlier; it was just light enough to see.

Q. Where was this inspection made?—A. The men of my company were still on the line as sentinels, and I went from one to one, right along the line, to each man.

Q. How long did your men remain on guard at the wall, or at the reservation line?—A. I believe they were relieved at about 9 o'clock.

Q. Were they at the wall when you took charge of your company?—A. They were, yes; at the right end of the wall, almost in rear of my own company quarters.

Q. Were there any lights along this garrison wall?—A. There were two lights at the main gate; no others.

Q. Your company was how far from the main gate?—A. After it was finally posted the main part of the guard was at the main gate.

Q. Where was the extreme right of your company?—A. The extreme right was about 20 yards beyond the quartermaster storehouse.

Q. And where is that, if you can show us on the map; is it shown on the map there?—A. No.

Q. Now, you will tell us, if you please, how many lights there were along this line of skirmishers?—A. There were two at the main gate; no others.

Q. Were any other officers with your company at the time you were? I don't mean previous to your arrival, but after your arrival at the company.—A. Lieutenant Grier was there, and I relieved him.

Q. And the remainder of the time you were alone with your company?—A. All alone all night.

Q. Did you pass along this line of sentinels or take up your position in some particular place?—A. After posting the sentinels, which I did in person, I then directed my acting first sergeant, Harley, to go along the line and make an inspection.

Q. Of what nature?—A. To see if the men knew their orders and to see if they were properly posted and patrolling. After his return, about half an hour, I made a personal inspection of the line of sentinels, going as far as the quartermaster storehouse and the end of the line, returning by way of the guardhouse. After my return to the main gate, in about three-quarters of an hour, I sent around my next senior sergeant, who was Sergeant Carlisle, and he inspected the line. Those were all the inspections made until after it was daylight, when I made my inspection of arms.

Q. Was there any opportunity during this night for men to have cleaned their guns while at the wall?—A. I do not think so.

Q. Why not?—A. There were no means at hand to do so.

Q. Does not each rifle contain in its butt implements which may be used for cleaning purposes?—A. It does.

Q. Could not these have been so used upon that night?—A. I do not think so.

Q. Why not?—A. Because the brush wiper which is in the butt of the piece will not clean a piece so that an officer who is used to handling arms could not detect the signs of powder somewhere in the gun.

Q. Is it not customary also to have in the butt of the gun a small piece of rag which may be used in place of or with the brush?—A. I don't recollect that I have ever seen it.

Q. It might have been there without your seeing it, however?—A. It might be, yes.

Q. Did you ever hear of the so-called Evans incident? What was it, and when did you hear it?—A. I heard it late in the afternoon of August 13, from the evening paper of Brownsville. A few minutes afterwards—after reading the article—Major Penrose told me that Mayor Combe and a Mr. Evans had been out to see him and had reported that one of our soldiers had grabbed his wife the night before as she was returning from a ride. Immediately after this the major directed me to notify the men that all passes were revoked and all men would be inside the limits of the garrison by 8 o'clock. This order I gave to my company. Further, the major directed that we send out in town and bring in all men who were out, as Mayor Combe had informed him that there was an ill-feeling against the

men, and soldiers going around alone might not be safe from the wrath of the people.

Q. You carried out the instructions of the major, I suppose?—A. I did.

Q. These orders were given to you as a company commander, as I understand you, and not as officer of the day?—A. Another order was given me as officer of the day, which was to send out patrols and bring in the men. This was in addition to the orders given as company commander, to send out noncommissioned officers to bring in the men who were on pass. I was directed by Major Penrose, as officer of the day, to send out three patrols from the main guard, which I did.

Q. What orders, if any, requiring a special vigilance on your part were given to you by the commanding officer on August 13?—A. I was instructed to carry out the guard manual.

Q. Nothing else?—A. That is, the usual orders were given, which carried with it the general and special orders pertaining to an officer of the day and the guard.

Q. And these orders were given you when?—A. When I reported as officer of the day in the morning.

Q. I think you have already been asked and have answered the question whether or not these orders were added to at any time during the day or modified.—A. Is that another question?

(It has been asked, and your answer is of record.)

Q. How many inspections were required by existing orders of the officer of the day between dark and daylight?—A. Three. The officer of the day was required to inspect each sentinel on post once during his tour.

Q. Any special times designated?—A. No; there was no special time.

Q. Could it have been daylight as well as dark?—A. It might have been daylight, if it was before reveille, or the sentinel might be on in the daytime. No. 1, for instance; all the No. 1's might be inspected in the daylight.

Q. And the other sentinels were not added until dark?—A. Not until dark.

Q. At what hour?—A. They were put on immediately after retreat.

Q. And what time was retreat?—A. Retreat was at 6 o'clock.

Q. Were these orders as to the inspection of sentinels altered or modified in any way on August 13?—A. They were not.

Q. How many inspections were usually made before 12 o'clock midnight by you when previously acting as officer of the day?—A. Sometimes all and sometimes one after midnight, depending——

Q. The question was, before midnight?—A. Sometimes all before midnight and sometimes one after midnight, depending on the season of the year and my guard.

Q. Was it an order, post or otherwise, for an officer of the day to inspect after 12 o'clock?—A. There was no post order to inspect the guard after 12 o'clock, and it is not required by the guard manual.

Q. Did you make as many inspections or more on August 13 before midnight as usual?—A. I should say that I probably made one more, on account of the patrols that went out into town, as I went

in person to the guardhouse and sent out the patrols myself. This was exclusive from the inspections made of the sentinels on post.

Q. This, however, was not the result of an order which you received?—A. The orders in the Twenty-fifth Infantry, both under Colonel Hoyt and Major Penrose have always been, as I have stated them, that the officer of the day would visit each relief once on post. That is a standing order.

Q. Were you ordered to give the sentinel about the barracks any special instructions on August 13?—A. I was not. I will change that a little to add that there had been a great many boys around the quarters and it was either on that guard, or just before, that Major Penrose had given me instructions to keep the boys away from the immediate vicinity of the barracks. They came in there—we had all our property on the back porches, were just getting settled, and these boys would run up there and take some things—and always hanging around at meal times, so this special order was given to keep the boys away from the barracks.

Q. Did you examine the vicinity of the post and the barracks on the morning of the 14th?—A. I did.

Q. Did you find anything unusual?—A. In what respect?

Q. Did you find any ammunition, or shells, or anything of that sort?—A. I found shells and a few clips.

Q. What kind of shells?—A. They were our regulation shells, some of them U. M. C., and some Springfield.

Q. Empty shells, all of them?—A. They were all empty except one.

Q. Where did you find these shells?—A. I found the shells immediately in rear of the lavatory, or the sink of B Company quarters in the road at the mouth of the alley that's next to Elizabeth street.

Q. What time in the morning was this?—A. Just as soon as I could see. I could not tell you the exact time.

Q. Immediately following daylight?—A. Yes; it was just the streak of dawn.

Q. What did you do with these shells?—A. I showed them to Major Penrose.

Q. At once?—A. Just as soon as I saw him, which was very shortly afterwards.

Q. Do you know where these shells are now?—A. I do not. I can explain that. I put them in a desk that I had at Brownsville, they are probably in the drawer of that desk yet.

Q. Your personal desk in your quarters?—A. No; a quartermaster desk.

Q. Did you examine the inside of these shells to see whether or not there was any residue of burned powder, showing they had been recently fired?—A. I did not.

Q. Will you give the extent of the post of each sentinel of the regular guard who was on guard that night?—A. No. 1 was at the guardhouse. No. 2 extended around the barracks, keeping the barracks on his left. No. 3 was around the officers' quarters, keeping them on his left. No. 4 started at the commissary and extended down the main road as far as the wood yard, which was right next to the quartermaster storehouse. That post he marched, keeping the buildings and everything on his left.

By counsel for accused:

At this point I ask officially that the court be supplied with a blueprint, or some print, showing the post of Fort Brown. Certainly at department headquarters they must have such a thing, and I know we are frequently going to have to refer to certain roads, and I will state that in my investigation yesterday that the road this map shows passing in front of the guardhouse passes in rear entirely. It is confusing, misleading, and everything else, and certainly there must be something that shows our own post down there, and certainly we should have it, so the court may not be misled, and, as a matter of fact, we ought to have it to show where these sentinels were. We should have it to append to the record.

By the judge-advocate:

I inquired at the beginning of this trial if there was such a map, and did secure a rather imperfect blueprint of Fort Brown, on a very small scale, and I think this same one can be gotten in a few minutes by sending to the chief quartermaster's office. The map is not very satisfactory; it is rather small.

By the counsel:

Anything is more satisfactory than this map that shows houses 150 yards from where they really are. It is wrong. I will state that I have written and reminded Mr. Kleiber of his promise to send a map of the city, which would show Fort Brown also. In other words, I am trying to get all the information I can for the court.

The judge-advocate was instructed by the court to send for the blueprint mentioned.

Q. Who was the sentinel on No. 2 post that night?—A. Private Howard, of Company D.

Q. Do you know whether or not Private Howard has ever had any trouble with the people in Brownsville; any people in Brownsville?—A. I never have heard that he had.

Q. You know nothing about it, if he had had?—A. I do not.

Q. I ask you, as a question of fact, whether if the post of Howard had extended merely up and down in rear of the company quarters would it have been possible for him to have seen any man or any group of men jump over the wall upon that night?—A. It was a very dark night. I don't believe if he had been, for instance, at the end of D Company quarters that he could have seen anybody in rear of B Company quarters. In fact, I came around from the guardhouse between that vacant set of quarters and C Company quarters, and I could not—this was about half past 11—could not distinguish anyone in rear, except on the main walk going out of the garrison when they came in the glare of the street lamp.

Q. As a matter of fact, was there anyone there? You said you could not distinguish——

A. I was looking for the sentinel; he was there. I found the sentinel immediately between D and B Company quarters on the front walk.

Q. But there was no one else in rear of the quarters at that time?—A. Yes; there were some others—some children.

Q. At what point?—A. Right on the walk at this end of B Company quarters there were three or four children—five children.

Q. But these children were in the light?—A. They were in the light so I could see them.

Q. There was no one else, however?—A. No; no one else.

Q. Did you ever hear of the so-called Tate affair?—A. I have.

Q. What was it?—A. It was an affair between a man named Tate, who was in the customs service of the United States, and a member of my company named Newton—James W. Newton. That question was, What was it?

Q. Yes.—A. I think this affair occurred on a Sunday night, a week or two weeks before the shooting. The exact night I do not remember, except that it was a Sunday night, when Newton came to my quarters and reported to me that he had been knocked down on Elizabeth street, on the block or in the block, about a block beyond the post-office; that he and Private Lipscomb, of my company, were walking down the street. The sidewalk there was quite narrow, and on the outer edge of the walk a man stood with five women. Newton said that it would be necessary for he and Lipscomb to go out into the street or to pass between the people and the fence, and they decided to do that and dropped into single file; that Newton—he was in the lead, and when opposite this man Tate, whose name I afterwards found out in my personal investigation of the matter—he hit Newton in the head with the butt of his revolver and said, "Here, you damned nigger, I will teach you not to walk on the sidewalk when ladies are standing there." Newton told me at the time that one of these women said something to him, he was not positive what it was, but Newton was knocked to the ground, and Tate covered him with a revolver. Lipscomb reported to me that he himself was frightened and turned and ran to the corner, which was about 30 or 40 feet distant. Newton staggered to his feet, and Tate covered him with his revolver. "Now," he said, "turn around and march, and, damn you, if you make a move I will blow your brains out." He marched Newton back to the corner where Lipscomb was, cursed a little more, and told him to go home. Newton came to the garrison, I believe, immediately. He came to my house; was not excited in any way, except slightly nervous; said his head hurt very bad. He thought he had been very much mistreated and wished to make the official report to me, and I made the personal investigation that night of both Newton and Lipscomb, also a further investigation the next day, and from the cashier of one of the banks in Brownsville—I have forgotten the name of it—found out the name of this man Tate.

Q. Did you ever see Mr. Tate and question him as to his side of the story?—A. I don't recall that I have ever spoken to Mr. Tate. I saw him here on the court-martial the first time I ever recall seeing him.

Q. Was Newton angry or incensed at Tate when he reported to you—appear to be?—A. He didn't appear to be a bit excited. He was naturally angry over being hurt.

Q. Did this incident become widely known in the garrison?—A. I don't believe it did, unless it was general conversation among the soldiers, and what that was I could not say.

Q. Do you know whether or not any feeling of resentment was engendered by this incident?—A. I don't think so in the least.

Q. Did Newton tell you there was a fence at this place?—A. A fence? Yes.

Q. As a matter of fact, is there a fence there?—A. I do not know; I did not go up there. Most of the houses in Brownsville, to my recollection, did have fences.

The court then took a recess until 11 o'clock a. m., at which hour the members of the court, the accused, his counsels, the witness, the reporter, and the judge-advocates resumed their seats.

The judge-advocate addressed the court as follows:

The blueprint map of Fort Brown has been brought into the court room, and I would like to hear any remarks that counsel cares to make about the map.

By counsel for accused:

From a cursory examination counsel is convinced there are a number of errors. For instance, it does not show the new gymnasium, it does not show the path described as crossing the parade ground east of the road by the administration building, it does not show one or two other buildings. It does not show a road in front of the guardhouse and one in the rear except one well in the rear, which it is assumed is the one shown there (indicating map on wall). It does show noncommissioned staff quarters to the east of that last-mentioned road and none to the west of it, as indicated on this map. There are a number of omissions, I presume accurate at the time it was made, but it does not show the present condition of Brownsville. I believe such a map could be gotten from the Quartermaster-General's Office, because they must keep posted as to where the different buildings are.

By the judge-advocate:

I understand, then, that this map is not entirely satisfactory, and if the court desires I can send a telegram to the Quartermaster-General, asking if he can supply us with such a map.

By a member of the court:

Could not this present map be corrected to the extent the counsel desires?

By the judge-advocate:

May it please the court, I think I would be inclined to object to that, because there are a number of different opinions.

By the president of the court:

Mr. Judge-Advocate, if you can secure an official map that is accurate and up-to-date the court would be glad to have you do so.

By a member of the court:

I would like to suggest that the department commander be requested to send an officer down to Brownsville with this map and let him correct it down there.

By the president of the court:

Mr. Judge-Advocate, obtain a map that is certified officially as being correct. Of course the means of obtaining it will——

Q. Did you ever hear of any trouble which a soldier by the name of Reid had with a man named Baker?—A. Yes; but the man's name was Bates.

Q. I will amend the question. Will you kindly describe what this incident was?—A. Private Reid reported to me that returning from Matamoros he was knocked off the plank walk that runs to the ferry on the American side—knocked off this walk by one of the customs officers, whose name he afterwards found to be Bates.

Q. For what reason was this man knocked off the walk, if you know?—A. He told me that the walk was narrow and this man—in passing this man he brushed against him and the man deliberately shoved him off, saying at the same time that he would let no negro walk on the same walk with him. I had the investigation the next morning, which was the morning of August 13, and found out that Reid had been drinking the night before and was quite noisy down

there at the platform; also that this was before he had passed this man, Bates. Bates was not present, in other words, when Reid was noisy.

Q. Whose story did you investigate?—A. I investigated Reid's.

Q. Did you ever see Mr. Bates and talk to him about the incident?—A. I saw Mr. Bates last week, but did not talk to him about it.

Q. In what company was Private Reid?—A. In my company, C Company, Twenty-fifth Infantry.

Q. Did you ever hear of any trouble that a soldier named Adair had with a certain citizen of Brownsville?—A. He had no trouble.

Q. Did you ever hear of any incident that might be called the Adair incident?—A. Yes.

Q. Will you kindly describe what that was?—A. Adair reported to me, as company commander, that after a visit to Matamoros he returned from Matamoros and had in his breast pocket a small silver penholder which he paid 50 cents gold for; that after crossing the ferry he was held up by one of the customs officers and searched and the penholder was taken from him. Adair said that the man cursed him for trying to smuggle, and also informed him, Adair, that he was going to report him to his company commander. Adair made the report to me and said that he was perfectly willing to pay the duty, which was a very nominal figure, but that the man would not give him back the penholder. This incident occurred on Saturday, August 11, and in the subsequent events I had no chance to investigate the matter further with Adair.

Q. In what company was Adair?—A. Company C, Twenty-fifth Infantry.

Q. So the soldiers, Newton, Reid, and Adair, were all of your company?—A. All of my company.

Q. Did not these events apparently engender some ill feeling in your company against the people of Brownsville?—A. Not in the least.

Q. Did that seem natural to you?—A. The only man who felt grieved very badly was Newton. He was not incensed or angry, but he felt hurt. Newton was a splendid soldier, a man of good habits, and I do not believe, knowing the man, that he would deliberately pass any people on the sidewalk, white or colored, and brush against them or knock them off. He was my company clerk for a long time, and was extremely polite and obedient.

Q. The only participants in the Tate-Newton, the Reid-Bates, and the Adair incident were soldiers and customs officers, were they not?—A. I believe so. Bates was in the customs service and afterwards did the same thing, so I have found out since, to another man, and had to leave Brownsville. Tate, I believe, was in the customs service, and the other man was an inspector of customs, who searched Adair. His name I do not know.

Q. I ask you as a military man whether these various incidents would not naturally have created a feeling of resentment by the soldiers against the customs officers?—A. I should think so. They felt they were being imposed upon.

Q. Did you report any or all of these affairs to the commanding officer, Major Penrose?—A. I did.

Q. All of them?—A. Yes; all of them.

Q. He was, then, fully cognizant of what had occurred?—A. Yes;

but we had had no opportunity to investigate the affair, further than what I did personally, on account of the absence of the collector of customs, a Mr. Vann.

Q. Will you state to the best of your recollection what Major Penrose said when you reported these incidents to him?—A. I don't believe I can.

Q. Can you state the effect?—A. Well, he felt as I did, I think; that the men were being imposed upon; they were not being treated fairly.

Q. Now, if both you and Major Penrose felt that the men were not being treated fairly, isn't it reasonable to suppose that the men themselves in the garrison would have the same feeling?—A. I think so; yes; those who might know it.

CROSS-EXAMINATION.

QUESTIONS BY THE ACCUSED.

Q. How long have you been in the service, Captain?—A. Fifteen years this coming month.

Q. Where have you served?—A. I have served—do you wish the especial places?

Q. Generally; yes.—A. Governors Island, New York Harbor——

Q. When?—A. From 1889 until the spring of 1890. At Alcatraz Island from May, 1890 to 1892. At Fort Canby, Wash., from 1892 to 1894. At the Presidio of San Francisco from 1894 to February 2, 1896. In Porto Rico from 1898 to November 30, 1900. At Fort McPherson, Ga., from that time until March, 1901. Then went en route to the Philippine Islands, where I served until 1904. Since that time I have been stationed at Fort Niobrara, Nebr., Brownsville, and Fort Reno.

Q. What was your enlisted service of this part?—A. Six years and four months.

Q. And you have been a commissioned officer since when?—A. Since July 9, 1898.

Q. What part of the Philippine Islands did you serve in?—A. I served for three months in Leyte, southern Leyte, when General Smith sent me to Samar, where I stayed for a year; then went to Tacloban, Leyte, and stayed there until the Surigao campaign broke out, and then I went to Surigao.

Q. What was your station in Samar?—A. Quinapundan and Guian.

Q. You were there during the active hostilities after General Lucban?—A. Yes, sir.

Q. Did you remain there after he was captured and surrender was made?—A. Yes, sir.

Q. How long have you been in the Twenty-fifth Infantry, Captain?—A. Since December, 1904.

Q. Have you had command of C Company ever since that?—A. Ever since that date, yes, sir; December 12, 1904.

Q. You were wounded recently, were you not?—A. Yes, sir.

Q. When was that?—A. The night of December 21.

Q. Have you recovered from that yet?—A. Not entirely; no, sir.

Q. Where were you wounded?—A. I was shot in the head and also under the left arm.

Q. You were officer of the day on the 13th of last August?—A. Yes, sir.

Q. You marched on at what time?—A. At about 10.15—between 10.15 and 10.30.

Q. And when you reported you state your instructions were to carry out the usual orders?—A. Yes, sir.

Q. And those usual orders are found ordinarily?—A. In the guard manual; and they are the standing orders of the post.

Q. And these standing orders at that time included the keeping of children away from the barracks?—A. Yes, sir.

Q. Did your standing orders at that time require you to make certain inspections of the guard?—A. Yes, sir.

Q. And what inspections were they, do you say?—A. The main guard—I mean to visit the guardhouse at all roll calls—reveille, guard mounting, retreat, and at taps.

Q. And what inspections were you expected to make of your three reliefs or sentinels?—A. Relief or sentinels were supposed to be inspected at least once while on post.

Q. Was there any specified time when you were to make this inspection?—A. There was not.

Q. Did you make an inspection of your sentinels that day?—A. Yes, sir.

Q. Can you now tell when you visited the sentinels—the various visits, if more than one?—A. I don't believe I can give you the exact hours.

Q. Well?—A. But I started in shortly after 6 and I finished up the last one in front of my own house at about half past 11.

Q. Do you recollect whether you paid any visit to the sentinels of the main guard after 12 o'clock that night? Of the main guard, not the company guard you put out.—A. Not from the time of my reporting to the commanding officer until I inspected the main guard the next morning and inspected their rifles. Not between that.

Q. Now, you state your orders were subsequently modified by Major Penrose between half past 5 and 6—your orders as officer of the day. I wish you would state as nearly as you can, and specifically as possible, what his orders were as officer of the day.—A. That order was for me to send out into the town of Brownsville three patrols. The first one to go out at about 7.30, and then the others. I don't recollect that there was any special time, except they were to go out between then and 10, and then, and taps, so as to get in any men who might be out. There was an interval, the first——

Q. We will take up the question of patrols in a few minutes, as to when you sent them out; but now we want to get at the orders, as near as you can recollect, the specific orders Major Penrose gave you, as officer of the day.—A. I got that order, as I have stated it, to send out these patrols—three patrols. At the same time I asked him if he wished me to go out, and he said, if I felt—if I desired—I could, to follow the patrols up and see they carried out their duty and see they got in all the enlisted men, which I did.

Q. Do you remember his saying anything in connection with this order that no one was to be allowed to leave the garrison that night?—A. Yes, sir.

Q. When did he give you that order?—A. About quarter to 6.

Q. At the same time he gave you the other order?—A. Yes, sir.

Q. And his order was no one was to be allowed out that night?—A. None of the men of the command were to be allowed out.

Q. And what if anything did he say about passes?—A. Passes were all revoked.

Q. From what hour?—A. Eight o'clock.

Q. And you say no one was to be allowed to leave the garrison that night?—A. Yes, sir.

Q. Did you understand that order was given to you as officer of the day?—A. Both as officer of the day and as company commander.

Q. Did you transmit that order to your noncommissioned officer, or commander of the guard?—A. I did.

Q. Who was that?—A. The commander of the guard was Sergeant Reid, of Company B, Twenty-fifth Infantry.

Q. Can you remember where you gave the order to him?—A. At the guardhouse.

Q. And did you give him all of this order, as given by the commanding officer?—A. I did.

Q. Did you understand from the order that Major Penrose gave you, as commanding officer, that your guard was to prevent men going out after 8 o'clock?—A. Yes, sir.

Q. And did you so transmit it to your noncommissioned officer of the guard, Sergeant Reid?—A. Yes, sir; the entire guard was instructed.

Q. That no enlisted men of the command were to be allowed out after 8 o'clock?—A. Yes, sir.

Q. About what time was it when you gave this order to Sergeant Reid, sergeant of the guard?—A. I gave him the order about no men being allowed out at retreat when I made my inspection of the guard. The order about the patrols I did not give until later, because I did not want the matter circulated through the garrison.

Q. Now, Major Penrose had given you at this time the order to send out patrols, had he?—A. Yes, sir.

Q. Now, Captain, let's take up the question of patrols; when did you first send out a patrol?—A. The first patrol, a corporal and two men, left Fort Brown at about 7.30. This was followed——

Q. Wait a minute. Did you give any instructions to this patrol; and, if so, what were they?—A. The instructions to this patrol were to go down Elizabeth street five blocks, turn to the right two blocks, and return to the post on the street parallel to Elizabeth street. The corporal was instructed to arrest and bring in all men found out in town. To notify them that their passes had been rescinded, and that all men must be back in the garrison by 8 o'clock. The second patrol——

Q. Went out at what time?—A. Seven forty—seven forty-five.

Q. Who was sent on that?—A. Private Ash, of Company D, Twenty-fifth Infantry, who was sent to the landing way, where boats left for Matamoros. I instructed him to remain on the landing platform until 9 o'clock that night, until the clock struck—there was a big clock they had there. He asked me if he should take his gun, and I said, no, he was instructed to go there and remain on the platform until 9, and notify any men returning from Matamoros, or

attempting to go over there, that all passes were revoked, and that all men must be in the garrison by 8 o'clock.

Q. And now your next patrol, when did that go?—A. The next patrol went out at 8 o'clock. That patrol I instructed to go outside of the garrison wall and go down three or four streets—that part of the town was not familiar to me, but it was over in what was known as the "tenderloin district." They were to go down and patrol through that part of town, then go down five blocks and turn to the left and return to the garrison by way of Elizabeth street.

Q. Did you send out another patrol?—A. I sent out the fourth patrol—covered the same ground as the first.

Q. And who was on that, if you recall?—A. That one, if I remember correctly, was Corporal Wheeler.

Q. Did you yourself go out at any time?—A. After I had started the patrols.

Q. About what time?—A. That would be about 8 o'clock. I went down Elizabeth street from the garrison. On the way, however, I stopped at my company and asked the first sergeant if all the men were in. Then went down Elizabeth street to the block beyond the post-office, turned to the right three blocks, and went down a couple of side streets, then got on a street passed by the market. That part of town was not very familiar to me, so I just walked around; most of the streets were dark. I did not see any soldiers. Went to the market place and saw a man standing there; in fact, there were four or five men standing there in one place on the left-hand side, but this man I spoke to and asked him if he had seen any of my patrols, and he said, "Yes, one had just passed by a few minutes before." I asked him also if he had seen any of the men in town, and he said, "No, not recently."

Q. Was it a civilian you were talking to?—A. Yes, sir.

Q. Did you know him?—A. Yes, sir.

Q. Who was he?—A. His name was Crixell; I don't know what his first name is.

Q. Did you go out again that night, yourself, or send any patrol out?—A. I sent out the fifth patrol a few minutes after 10. I did not go out; no, sir. The fifth went out, covering the ground taken by the third.

Q. Do you remember who was in charge of that patrol, and what was the size of it?—A. It was 3 men, a corporal and 2 men. I am not positive who was in command of it, either Corporal Burdett or the third corporal of the guard, I have forgotten his name now.

Q. In giving the time you sent these men out, did you note it specifically yourself, or is that given from your recollection?—A. I personally superintended the departure of all the patrols, and the time I think is actually correct.

Q. And now, you say you sent these patrols out personally; did they report back to you, or who did they report to?—A. They returned to the guardhouse and I saw them there after their return. I visited the guardhouse at 9 o'clock, then again a few minutes after 10, and then again at check.

Q. And check was at the usual hour of 11 o'clock?—A. Eleven o'clock; yes, sir.

Q. Were any men arrested and confined that night for being out?—

A. There were no men confined. They were to be brought back to the post; the arrest was simply to bring them into the garrison.

Q. And send them to the quarters—is that what you mean?—A. Yes, sir.

Q. There were some men reported absent from your company, was there, when you asked your first sergeant about 8 o'clock, when you went out?—A. He reported to me that all the men were in except two who were on pass—three who were on pass—and could not be found.

Q. And these three were whom?—A. Sergt. George Thomas, Private Lee, and Private Edward Johnson.

Q. Did you report to Major Penrose the result of these orders; this patrolling, I mean?—A. I reported to Major Penrose at or about 9 o'clock.

Q. What is your recollection as to what you reported to Major Penrose at that time?—A. That I reported that the patrols had been sent out up to that time, by his instructions, as directed by him; that one or two men, or three men, I have forgotten which, had been found and brought back, and the patrols had not found any other men in town.

Q. But your recollection is some two or three men had been found and turned back by the patrols?—A. Had been brought in; yes, sir.

Q. Did you report the absentees from your own company; the men on pass, if you recall?—A. I think I did; yes, sir.

Q. Do you recall now anything else you reported at that time?—A. No, sir; I do not.

Q. Was it the custom at Fort Brown for the officer of the day to receive the reports of the first sergeant, at check?—A. Of the noncommissioned officers in charge of quarters; yes, sir.

Q. That's what we know in the Army as check roll call?—A. Yes, sir.

Q. You took that report that night?—A. I did; yes, sir.

Q. Were any men reported absent?—A. No men reported absent.

Q. Where was it customary for the officer of the day to stand when he took check, or was there any fixed place?—A. There wasn't any particular place, but we usually stood—that is, I always stood about the center opposite B Company, on the center walk.

Q. Did the noncommissioned officer of the guard come up and report to you there?—A. No, sir; I went to the guardhouse, after taking check.

Q. About what time did you go to the guardhouse?—A. At about 20 minutes after 11.

Q. And what did you do at the guardhouse at that hour?—A. I inspected the guard and prisoners, sir.

Q. How many prisoners did you have, do you recall?—A. I do not; no, sir; I believe it was four.

Q. How long were you at the guardhouse at that time?—A. I don't think it was over five minutes.

Q. And where did you go from there?—A. From there I went down in rear of the company quarters, passing in rear of my own company quarters.

Q. What purpose had you in going there?—A. A few days before this the first sergeant had notified me that men returning from pass

had been in the habit of sitting out on the back porch, and talking and disturbing the other men, and I had given an order that no men were allowed out there after retreat, so I went there to see if any were sitting around on the porches.

Q. Did you see or hear any men on the porticoes at that time?—A. No; I did not.

Q. You were satisfied then that your order had been obeyed at that time?—A. Yes, sir.

Q. You said something about an incident of seeing some children at this time. Tell us just what occurred.—A. When at the south end of my own barracks I saw, up on the walk between B and D Company, which I supposed was a couple struggling—it was not very light—that is, the lights were not very bright—and I unhooked my saber and ran up there just as hard as I could go, and when I arrived at the point on this walk, I found either six or seven children, held off by a big, black dog of one of the companies. He was growling, and they were very much frightened and these children were swaying back and forth, running around each other, or around the largest boy of the party, so as to get away from the dog, and I drove the dog off and took the children to about the center of the parade ground. I knew nearly all of them and asked them where they had been; they said they had been to a party at the Cowen house; and after taking them out there I told them they could go along home by themselves, and I went back to get my sentry and inspect him.

Q. About where did you get your sentry that you speak of?—A. I found him on the walk between D and B Company, on the walk which runs in front of the company barracks.

Q. As a matter of fact, the walk indicated on the map there is erroneous, is it not—wrongly located?—A. In front of the barracks?

Q. I mean this walk passing close to quarters 9 and 10 and running into D Company. As a matter of fact, doesn't that come out nearly at quarters 8 and 9 and come by B Company?—A. It is right by B Company; not by D.

Q. Tell us whereabouts you found this sentinel there by B Company. Can you point it out?

(Witness indicates on map.)

Q. About the intersection, then, of the walk we have just spoken of and the walk in front of the quarters?—A. Yes, sir; just about that point.

Q. While you are there show us about where you went with these children on the parade ground.—A. There is a walk running down the parade to the center of the administration building, and I took them out to about that walk (indicating on map).

Q. What kind of a walk is that, old or new?—A. It is an old brick walk.

Q. Rather grown up with grass?—A. Very much so.

Q. About how long were you with this sentinel?—A. Oh, a couple of minutes; long enough to ask his special orders and ask him some about his general orders.

Q. To acquaint yourself with whether he was posted in his duties?—A. Familiar with his duties; yes, sir.

Q. Then where did you go?—A. From there I went home.

Q. And where is home? Where was home?—A. Quarters No. 11.

Q. Did you see any sentinel on post No. 3 at that time?—A. Yes, sir; I saw the sentinel. He was walking then between Lieutenant Lawrason's house, which is 10, and my own.

Q. Did you examine him at that time?—A. Yes, sir.

Q. And what sentinel was that? Do you remember his name?—A. No, sir; I do not.

Q. But it was No. 4; he was on post regularly at that time?—A. No. 3.

Q. No. 3 I mean. And then where did you go?—A. Went to my own quarters, No. 11.

Q. What did you do?—A. I first removed my saber; left it on the front porch by the door.

Q. Why?—A. It has been a custom of mine to always leave it there, so I could get it going out in a hurry. I went into the back room downstairs where my desk was, took the evening papers, and looked at the headlines, and drank a bottle of beer. This all took about ten minutes, when I went upstairs, put out the light, took my lantern, which I always keep burning at night, and went up to my bedroom, fixed the clock for reveille, and went to bed.

Q. Did you note the time when you fixed your clock for reveille?—A. Yes, sir.

Q. What time was it?—A. Ten minutes to 12.

Q. Was your clock right? Have you reason to believe your clock was right with the post time?—A. It corresponded with the post time; yes, sir.

Q. Now, you say you went to bed. What did you do to go to bed?—A. I removed my coat and laid down with all my clothes on.

Q. Except your blouse?—A. Yes, sir.

Q. Have your shoes on?—A. Yes, sir. I would like to add to that answer. Slept as I always have when I have been alone when officer of the day.

Q. Do you want to explain that further—slept as you always have. I don't understand what you mean.—A. I mean with my clothes on, as I always have when I have been alone.

Q. Captain Macklin, I wish you would show the court what room you slept in.—A. (Indicating on map.) A line drawn through there would divide the house in half. There was a room downstairs here and one downstairs here; a room upstairs over this one and one over this one. Back here, being the lagoon, the back room up there is the one I used as a bedroom on account of the breeze that came in.

(Witness indicated the front or main part of the house at No. 11, both downstairs and upstairs, and in indicating a line that would divide the house in two parts such line was run from east to west, passing through the middle of the front or main part of the house, or the part forming the T—the cross to the T.)

Q. Then it was the back room in the main part of the house?—A. Yes.

Q. And not the back room in the L or T part?—A. Oh, no; it was the natural bedroom of the house. The other room no one can live in.

Q. Why?—A. Because it is too hot.

Q. Were you awakened that night?—A. Yes, sir.

Q. What time?—A. I was awakened about ten minutes after 1 or a quarter after 1.

Q. By what?—A. By a member of the guard, who told me that the commanding officer was looking everywhere for me.

Q. Do you remember who this man was?—A. I think his name is Hairston.

Q. Charles Hairston?—A. Yes, sir.

Q. How did he wake you, Captain?—A. By running right into the room and shook me or touched me on the foot.

Q. Had you been awake before this?—A. I had been awake a few minutes before that; yes, sir.

Q. Tell us about it.—A. At five minutes to 1 I heard what I thought was a knock at the front door, so answered "yes," then got off the bed, went over and lit my pipe, looked at the clock and saw it was five minutes to 1, and said, "I must have been mistaken; I was dreaming; it isn't time for reveille." I thought it was the bugler calling me for reveille, and I laid down again and went to sleep. The man did not answer or say anything to me other than just knock.

Q. At least that's all you heard?—A. That's all I heard; yes, sir.

Q. Where did you go then, Captain, after the man wakened you; what did you do?—A. I went over and reported to Major Penrose at the main gate.

Q. And he was where?—A. At the main gate.

Q. Did you note who else was there, if anyone, at that time?—A. Yes, sir; Mayor Combe was talking to the major when I reported to him.

Q. Do you remember what was said by Major Penrose at that time?—A. He spoke to me; asked me where I had been. He told me also that he thought they were afraid I was out in town; that I had heard the shooting, and had run over in that direction, and probably been shot.

Q. Said he was afraid you had been shot?—A. Yes, sir.

Q. Is that all you remember of it now? That is all that he said to you at that time?—A. The whole conversation was something like this: He said, "My God, boy, where have you been?" I said, "Over in my house asleep." He said, "I have hunted all over for you. I was afraid you had heard the shooting and had run out in town, or run out there on the street, and been shot, and I sent Lyon with his company out in town to find you."

Q. Did he give you any order then?—A. He gave me an order then to join my company, also to verify the company.

Q. An order to verify the company?—A. Yes, sir; and I think it was right at that time he also gave me the order to inspect my guns as soon as it was light enough to see. Either then or shortly afterwards.

Q. Are these two—the second you are not so certain of—the only orders you recall as his having given you at that time?—A. Well, I was directed to put my company on the line, in line of skirmishers.

Q. Not at that time?—A. No; just shortly afterwards.

Q. What did you do when he told you to verify your company?—A. I had the men assembled, had the first sergeant call the roll, and he didn't do it very well, so I called the roll myself; had all the men

step forward one pace so I could clearly see them; walked down the line and examined them, and then I also counted the men and verified them.

Q. Where were you when you did that with your company?—A. Right in front of my own company quarters under the street lamp.

Q. Then you had taken them from the wall to that point?—A. Yes, sir.

Q. You were satisfied in your own mind that all the men were present at that time that should have been?—A. Yes, sir.

Q. Were you subsequently ordered to put your men at some other place?—A. Yes, sir.

Q. You did so?—A. Yes, sir.

Q. About what time was that?—A. I think shortly after 2 o'clock; I am not quite positive about that, though.

Q. What did you do; remain on guard all night then?—A. Yes, sir.

Q. You testified to that?—A. Yes, sir.

Q. Where was your headquarters at that time?—A. My headquarters was at the main gate.

Q. What were your orders about passing men in and out?—A. No one was allowed to pass in or out. No one allowed to pass out at all; no one allowed in except the mayor of Brownsville, which was afterwards changed so as to allow persons in that he gave a pass to; not that night, though.

Q. Passing on now to the question of the inspection. Did you inspect your guns the following morning?—A. Yes, sir.

Q. About what time?—A. Started in about quarter of 6.

Q. Was it as soon as it was light enough to see?—A. Just as soon as it was light enough; yes, sir. I went out on the parade and took reveille, and then came back and started in a few minutes afterwards.

Q. Reveille was at 5.30?—A. Yes, sir.

Q. And it would be a few minutes after that before reports were made to you?—A. Yes, sir.

Q. So you went back from your performance of your duties at reveille and commenced your inspection?—A. Yes, sir.

Q. Did you go through all the guns?—A. I went through every gun I had.

Q. Did you find any guns in your company that were powder-stained?—A. No, sir; not in any way.

Q. You are satisfied that at that time there were no powder-stained guns in your company?—A. Yes, sir; perfectly satisfied.

Q. What did you do after you inspected the company?—A. Came back by the road leading from the quartermaster storehouse to the guardhouse and inspected the guard.

Q. Did you find anything?—A. No, sir.

Q. You inspected all the guns of the guard?—A. Yes, sir.

Q. Did you find any guns that were powder-burned?—A. No, sir; none at all.

Q. Were you relieved from the wall that morning before 9 o'clock for any purpose?—A. No, sir: I think I was relieved at 9 or about 9.

Q. Wasn't your company relieved for breakfast by B Company?—A. Yes, sir.

Q. About what time was that?—A. About 7.30.

Q. Or immediately after their inspection was completed?—A. Yes, sir.

Q. And then you went back on guard?—A. Right after that, and stayed until 9.

The court then took a recess until 2 o'clock p. m., at which hour the members of the court, the judge-advocates, the accused, his counsel, and the reporter resumed their seats.

The witness, Capt. EDGAR A. MACKLIN, was reminded by the judge-advocate that he was still under oath.

CROSS-EXAMINATION CONTINUED.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. As I understand, this morning you stated that you reported to Major Penrose about 1.15, and that his order that you got was to take command of your company?—A. Yes, sir.

Q. And the next was to verify the company?—A. Yes, sir.

Q. Who was in command of the company at that time?—A. Lieutenant Grier had been placed in command of my company owing to my not being present.

Q. Were you ordered to report absentees?—A. Yes, sir.

Q. Did you do so?—A. Yes, sir.

Q. And you reported——A. I reported that I had 45 men present, that the absentees were 3 men on pass, 4 men on guard——

Q. We will take that up in a minute. Now, what was the next order you got from Major Penrose after that?—A. It was to take position along the line extending from in rear of D Company's quarters over to the quartermaster storehouse; that in case of an attack the men behind the wall were to remain in their positions; the other men were all to be instructed to fall back on the parade ground and lie down; that under no circumstances was any man to fire unless he had a direct order from a commissioned officer.

Q. Was there any orders about an alarm—giving the alarm—or anything of the sort in this connection?—A. Well, in case a party of men were seen approaching the post, the man was to immediately give the alarm.

Q. And then fall back?—A. And then fall back; yes, sir.

Q. And what was the next order you got, as company commander—to inspect your rifles?—A. Inspect my rifles as soon as it became light enough to see.

Q. Was anything said about inspecting the ammunition?—A. Yes, sir; also to inspect my ammunition and verify it.

Q. Now, tell us what the result of this roll call of yours made in obedience to the orders of the commanding officer, as you testified, was made on company parade, as to the number of men present and absent?—A. The result was that I found 45 men in ranks; there were 3 men away from the company—away from the garrison.

Q. Where were they—on detached service?—A. Two were on detached service, 1 at Fort Bayard, N. Mex., and the other at Kansas City, on furlough. In the post not present with the company,

were 4 men on guard, 1 in the hospital, 2 in confinement, 1 sleeping at Lieutenant Higgins's quarters, 1 at Major Penrose's, and there were 3 men out on pass and 2 men at the Government corral.

Q. Making a total of——A. Making a total of 62 men.

Q. Now, did you make a check up of your rifles at this time?—A. The rifles out in the hands of the men—I examined all the men and found they each had a rifle. The rifles in the storeroom were not checked until the morning of August 14, the following morning.

Q. Were there any rifles not in the hands of the men and not in the storeroom?—A. Yes, sir; there were 2, one in the possession of Lieutenant Hay, who was a competitor at the rifle competition at Fort Sill, and another one in the possession of my first sergeant, who was also a competitor at the same place.

Q. How many rifles were you accountable for altogether?—A. Seventy.

Q. You say there were 2 at Fort Sill and 45 in the hands of the men?—A. Yes, sir.

Q. That leaves——A. Thirteen to be accounted for.

Q. Twenty-three to be accounted for.—A. Twenty-three.

Q. Where were they?—A. All the balance of the rifles were in the storeroom in the field chest.

Q. How many rifles did you have out of the storeroom altogether?—A. I had 57. Every man was equipped with a rifle except the 2 musicians.

Q. Now, where were the rifles that were not in the hands of the men, not in the storehouse, and not at the rifle range?—A. They were locked in the gun racks.

Q. Did you check those up that night?—A. I did; yes, sir.

Q. Did any of those men who were absent—that you have named over as being absent from the post, except the guard—have their rifles with them?—A. They did not; no, sir.

Q. And the men you stated were out of quarters?—A. They were all locked in the gun racks. There was a uniform order that all guns belonging to men who were on extra or special duty would remain in the quarters in the gun racks.

Q. Were all your gun racks in perfect condition when you looked at them that night?—A. No, sir; they were not; there were two of them that had been damaged, and I called for the noncommissioned officer in charge of quarters—the first sergeant reported to me also—and reported to me that these gun racks had been broken open by an accident.

Q. You know, now, about that personally?—A. No, sir; except the simple report.

Q. What was done with these gun racks—these injured gun racks?—A. The following morning I reported to the quartermaster, Lieutenant Grier, to have them repaired, and he gave me an order, and I directed the quartermaster-sergeant to send them to the post blacksmith for repairs.

Q. Do you know what instructions you gave in sending them over there to be repaired?—A. Yes, sir; I gave orders to the quartermaster-sergeant to have the gun racks put on the back porch, and for him to go to the provost sergeant and get a team and have them hauled to the post blacksmith shop.

Q. Were the others damaged at all?—A. There were some marks on them, but not damaged to the extent of being in need of any repairs.

Q. Did your artificer do any work on them?—A. Yes, sir; he fixed one of them where the block turned, and he nailed it together afterwards.

Q. Did you get an order from Lieutenant Grier, as quartermaster, to have these repaired?—A. Yes, sir.

Q. And they were so repaired?—A. Yes, sir.

Q. Do you recall the general nature of the injuries to these arm-racks that were reported by you to Lieutenant Grier, the quartermaster?—A. The damage was about the staple near where the lock joins—where the lock goes through, rather.

Q. How was this damage committed, apparently?—A. To all appearances it had been done by an ax.

Q. Were the locks injured, or any of them?—A. The lock of one of them was injured.

Q. In what way?—A. It had been cut in two on the hinge by an ax—what I took to be an ax.

Q. Well, what part of them were injured with the ax opposite the lock; was it the band that holds it in there?—A. Yes, sir; the band was very much bent and twisted.

Q. Were the staples injured—the staples that fasten the band on?—A. Where the bands join together?

Q. I mean where you pull the bands around and fasten onto the staple, and then insert the lock that locks the top of the gun in.—A. That staple was damaged.

Q. In both of them, or in one?—A. As near as I can recall, only in one.

Q. Is your recollection very accurate about these injuries?—A. Yes, sir; I feel quite positive about them.

Q. Do you remember how long it took to repair those?—A. I don't believe it was over an hour, sir.

Q. You have reason to believe that these were sent down in the provost wagon the following morning?—A. Yes, sir.

Q. Well, now, as far as you know, was one or both of the other racks unlocked that night or not, or do you know of your own knowledge whether they were unlocked?—A. I really couldn't say; I do not know.

Q. But you personally checked up your rifles at that time, and you are certain that all of the rifles that you are accountable for were either in the hands of the men or just where you placed them?—A. To my entire satisfaction.

Q. Did you report to Major Penrose the result of your roll call before or after making this inspection, if you remember?—A. After checking the rifles in the hands of the men; immediately after that.

Q. After checking the rifles in the hands of the men?—A. Yes; the other rifles, as I have already stated, I didn't check until the following morning.

Q. By the rifles in the hands of the men, do you mean the entire 57 that were out of the storehouse?—A. No; I mean the rifles that were in the hands of the men who were out in front of my company and the rifles that were in the gun racks.

Q. Do you remember what you reported to Major Penrose at this time?—A. I don't recall it now; no, sir.

Q. You didn't report anything more than that your rifles were accounted for?—A. That is all; and that my men were accounted for, except three men out on pass.

Q. Did you examine your rifles the next morning that were packed away?—A. Yes, sir; all of them, and my revolvers.

Q. What condition did you find those rifles in that were packed away?—A. I found them just about the same condition as when we had packed them at Fort Niobrara, with cosmoline oil on them, and unused.

Q. What condition was the package containing them?—A. The seals were unbroken.

Q. Just as they had been sealed at Niobrara?—A. Yes, sir; with the ordnance seals.

Q. Now tell the court what condition your pistols were in. Were any of those in the hands of the men?—A. No, sir; there was not—the pistols were in the storeroom, except one that was in my own possession; I had to send for it that night after I had reported to Major Penrose, and the others were in the storehouse, nine of them.

Q. You were accountable for ten?—A. Yes, sir.

Q. In what condition did you find those?—A. They were all covered with oil, and had been undisturbed.

Q. Now, Captain, in regard to your ammunition. What kind of ammunition did you come from Fort Niobrara with in the hands of the men?—A. Each man in my company had 20 rounds of the Springfield ammunition.

Q. The ordinary steel-jacketed bullet?—A. Yes, sir.

Q. Did you change that at all after you got to Brownsville?—A. Yes, sir; within two or three days after arriving at Brownsville I had all of this ammunition taken in and issued every man of the company 10 rounds of what is known as the guard ammunition.

Q. That is the reduced charge with the lead bullets?—A. Yes, sir.

Q. And this ammunition was kept where, by the men?—A. This ammunition was kept—they used the leather belt, and they were issued in the McKeever cartridge box.

Q. When you took up this ammunition what was done with it?—A. It was put in one of the regular ammunition boxes and screwed down and sealed.

Q. Now, when you check up your ammunition—when did you check up your ammunition?—A. My ammunition was checked the next morning at about 7.30.

Q. Right in that connection, had an issue been made the night before to your company?—A. Yes, sir.

Q. You were not present at that issue?—A. No, sir.

Q. Were you informed how much had been issued?—A. Well, the quartermaster-sergeant reported to me and also Lieutenant Grier informed me that he had opened one box, 1,200 rounds.

Q. An original package?—A. Yes; and had distributed them to the men, but he didn't know how many he had given to each man.

Q. Did you check that up?—A. Yes, sir.

Q. What condition was all the rest of your ammunition in?—A. Just as I had sent it from Niobrara, except this one box that had been opened by Lieutenant Grier—in his presence.

Q. And the box that you had repacked and sealed?—A. Just where it had been placed when it was picked up, undisturbed.

Q. Were any of those seals broken?—A. No, sir.

Q. Before you left Niobrara, had you taken any pains about seeing what ammunition your men had in their personal possession?—A. Yes, sir.

Q. What was that?—A. After the completion of the target practice, which was in the latter part of June, I gave an order to the company one Saturday morning that all ammunition in the hands of men was to be turned in; that I would make frequent inspections to see that there were none in the lockers, and if I found any man with any bullet ammunition at all that I would prefer charges against him. All the ammunition for the following Saturdays—two Saturdays following—I made inspections of the lockers and in some cases had barrack bags opened and the contents thrown on the floor, and as a result I think I got in every round of ammunition that was in the hands of my men. Then they had nothing further than the guard ammunition, which was 10 rounds. Later I received an order that each man was to carry 20 rounds of ammunition on the train, so I had to open up a box to issue.

Q. Then when you took this up, this 20 rounds, did the men have it all, or was it all turned in?—A. It was all turned in and there was none issued.

Q. The time that I refer to, Captain, was when you came from Niobrara, arrived at Brownsville, and took up this steel-jacketed ammunition and reissued your 10 rounds. Were these 20 rounds per man all accounted for at that time?—A. Yes, sir.

Q. And that is the time that it was packed away and the package sealed?—A. Yes; all of them.

Q. Were your packages—you stated, I think, that all your packages the following day were in original packages, all your packages of ammunition were in sealed packages?—A. All were in sealed packages; there was this surplus that wasn't an original package; there was one as it comes from the ordnance department.

Q. Were all these seals unbroken, of all the packages?—A. Yes, sir; all of them.

Q. When you said surplus you mean that you had ammunition surplus?—A. No, sir; I do not.

Q. The ammunition that you had on hand corresponded with your returns?—A. Yes, sir.

Q. Captain, how many keys did each gun rack have in your company?—A. Two.

Q. Two to each lock?—A. Yes, sir; two to each lock; two locks on the gun rack.

Q. Where were those kept?—A. They are usually kept, or have been in my company, one set in use by the noncommissioned officer in charge of quarters, who had orders to verify the guns night and morning, especially when he turned over, and the other set was kept in the quartermaster's storeroom, or in my company's storeroom.

Q. They were in the charge of the quartermaster-sergeant?—A. Yes, sir.

Q. And you happened to know personally where he kept them?—A. Yes, sir; he kept them in the field desk, to which he carried the key.

Q. So that one set was on a ring, turned over daily to the noncommissioned officer in charge of the room, and the guns checked up, and the other was kept in the field desk, to which the quartermaster-sergeant had a key?—A. Yes, sir; and I don't think anybody else knew where they were.

Q. Who was your quartermaster-sergeant at that time?—A. George W. McMurray.

Q. How much service did he have?—A. He enlisted in 1898; he was quite an old man, but he hadn't had any service previous to '98, as I recall it.

Q. Now, you testified that you made an inspection the following morning as soon as it was light enough to see?—A. Yes, sir.

Q. Did you find any guns at all that raised any suspicion in your mind at all as having been fired?—A. No, sir; not in the least. I found a few that looked dirty, and on these I used my handkerchief, but I didn't find anything at all.

Q. What did you report to Major Penrose as the result of that inspection?—A. I reported to him that I had found no rifles in my company or in the guard that were dirty; that showed any signs of firing.

Q. Do you remember when and where you reported that?—A. I think the major waited at the gate for me while I was away, and I made the report at the gate; I had to go all along the line and inspect my sentinels.

Q. Well, you reported specifically that you found nothing suspicious about any of your guns or of the guards?—A. Yes, sir.

Q. Did you make any report to him about your ammunition?—A. Yes, sir; that report was made about 10.30 that morning at the adjutant's office.

Q. And what did you report to him at that time about that?—A. I reported to him——

Q. About the ammunition, I mean.—A. I reported to him that I had examined my ammunition and found it all intact.

Q. Captain, did your men have their own rifles that night?—A. Very few.

Q. Very few of them had their own rifles?—A. Yes, sir.

Q. You discovered that in your inspection?—A. Yes, sir; and I permitted quite a good many men on that line to exchange rifles who had adjoining posts.

Q. When was that?—A. That was when I was inspecting those rifles the following morning; I don't recall that I found one man that had his own rifle.

Q. There was so many of them that didn't have their own rifle that you noted the fact?—A. Yes, sir; it was very noticeable.

Q. Was your guard ammunition all right, too?—A. Yes, sir.

Q. Do you remember how much pistol ammunition you had, and where it was?—A. No; I can't tell you how much I had, but that was in the box that never had been opened while I was there, because that night I wanted to get 10 rounds for my own pistol, and the quartermaster-sergeant told me it would take too long to open the box, and Lieutenant Lawrason loaned me 10 rounds.

Q. About what time were you relieved the next day?—A. About 7.30, I think; between 7.30 and 8.

Q. You now refer to what—being relieved from the—— A. From the guard for breakfast.

Q. When did you come off officer of the day, about, do you remember?—A. Ten o'clock, I think; between 9.30 and 10.

Q. Do you remember anything about what was done with your guard that morning after they were relieved from guard?—A. Yes, sir; I do. I had instructions from the commanding officer to have my guard marched by its commander to the adjutant's office and there report to him, and this was done.

Q. Do you know personally what the purpose of that order was?—A. I knew it was for an investigation. I wasn't present at the investigation.

Q. Do you know, as a matter of fact, that the guard was reported there?—A. Yes, sir; I saw them go there myself.

Q. And you gave the order yourself?—A. Yes, sir.

Q. How was that order given to you, do you remember?—A. It was sometime early in the morning. Major Penrose was with me for about—well, off and on all the morning we were together, and I don't recollect the exact time.

Q. Did he give you any other order about an investigation that morning?—A. Yes; told me to make an investigation of the men in my company, find out what they knew, also to select certain men—the men that I had the most confidence in—to appeal to them and try to get them to go among the men and find out what they could and make a report to us. This was done.

Q. Did you personally investigate your different men?—A. I did; every man in the company.

Q. The statements were taken down of every man that you investigated?—A. Yes, sir; I took a statement from every man of just what he had to say. This statement was afterwards put in the form of an affidavit.

The court then took a recess until 2.45 o'clock p. m., to enable counsel to find some papers, at which time the members of the court, the judge-advocates, the accused, his counsel, and the reporter resumed their seats.

(The reporter reads last question and answer, at request of counsel for the accused.)

Q. Was this put in the affidavit in the case of every man in the company?—A. All except those who were in confinement at Fort Sam Houston.

Q. And those you were not able to reach at the time you wanted to put it in the form of an affidavit?—A. No, sir.

Q. Your main guard was increased, so far as the general guard of the post was concerned, wasn't it, Captain, at the time you got out there?—A. Increased by my company; yes, sir.

Q. Now, was it the practice at your post to inspect—was it your practice to inspect your guard between midnight and reveille at all posts?—A. No, sir.

Q. That was left to the officer of the day himself?—A. It was left to his discretion.

Q. In the absence of any special instructions from the commanding officer?—A. Yes, sir.

Q. Didn't you visit your guard and exercise a good many more precautions after receiving that order from Major Penrose, about a quarter to 6, than ordinarily?—A. I don't think so. I have always gone to the guard a good many times in my tour; frequently make inspections between 12 o'clock and reveille, very frequently.

Q. But sending out of patrols and going downtown yourself was rather out of the ordinary?—A. Yes, sir; that was, indeed. We had never had any occasion to send out patrols before.

Q. So you regard those as extra precautions, would you not?—A. Oh, yes, indeed.

Q. Captain, how many shells did you find when you went out there the following morning?—A. To the best of my recollection it was seven shells and five clips.

Q. It was light enough to see at that time?—A. Yes, sir.

Q. And they were all found where?—A. They were all found in the roadway, in the road that ran along the garrison wall directly in the rear of B Company's sink, right almost at the mouth of the alley.

Q. Inside or outside the garrison?—A. Outside the garrison, in the roadway.

Q. Inside or outside the mouth of the alley itself?—A. Outside; it was really in the other street.

Q. That is to say, it was on the road?—A. It was on the road. I don't know the name of that road that runs along there.

Q. It is what is marked "road" there on the map, is it?—A. Yes, sir; I can show you exactly where it was.

Q. Just go and show us exactly where it was.—A. (Witness goes to map.) This is not exactly right; it should be a little over here farther. The shells were found about that position.

Q. About the middle of the road?—A. Yes, sir; looking right straight down the road.

Q. And the sink should be farther to the east?—A. Yes, sir.

Q. So as to cover the alley?—A. Yes, sir.

Q. Captain, while you are there, wasn't there some other house between that sink and the gate, inside the garrison?—A. There is another house right there.

Q. A little to the west of the letter B, but close to the garrison wall?—A. It was as close as the other one was.

Q. Do you know what that was used for?—A. That was an oil house, we all had that back of every company quarters; they should be all along there.

Q. About how large was that, how broad and how high? By broad I mean what length along the wall would you say?—A. That was a building that was easily 10 or 12 feet wide, about 8 feet high, a pretty good-sized building.

Q. Do you remember what it was made of?—A. Wood. It was about 6 or 7 feet deep.

Q. You have told about the Newton-Tate affair. As I understood you, that occurred on the 5th, or the Sunday previous to pay day, is that your recollection?—A. Yes, sir; that is the day it occurred.

Q. Now, you have told the court the result of your investigation. When did you report that to Major Penrose, if you remember?—A. The affair of Tate and Newton I reported or told the Major that night, but I made an official report in his office the next morning.

Q. With what result?—A. The Major directed me to try and use every endeavor to find out who the man was that hit Newton, and sometime on Monday I went downtown, as I have stated before, to the bank—I have forgotten the name of the bank now—and saw the cashier, whom I had met several times, and asked him if he had heard anything of the affair, and he said yes. He seemed rather reluctant to talk, but he said yes, he had heard of the affair, and also gave me the name of the man that he had heard that hit Newton, also the name of the collector of customs, Mr. J. V. Vann, I think he said, and I gave this name to the Major, and the Major told me afterwards that he had written a letter to the collector of customs, and that the collector of customs wasn't at home, but was away on a short leave.

Q. When this man Newton, whom you said was very collected or calm, or some such expression, reported this to you, what did you say to him?—A. I said, "Very well, Newton, I will lay the entire matter before the commanding officer to-morrow morning."

Q. After you had laid this matter before the commanding officer, did you see Newton in regard to the matter?—A. I saw him the next morning between 10 and 12, and talked to both Newton and Lipscomb.

Q. What did you do to them then—did you take their statements down at that time or any time?—A. I made a written statement in each case, and this memorandum—I don't know what became of it, but I made a memorandum of what they had to say at that time.

Q. Do you know of your own knowledge whether they made affidavits about that?—A. No; I do not.

Q. Did you tell them anything about what you were doing—tell this man Newton?—A. Yes, sir; I told Newton that we had found out the name of the man who had hit him, and also that Major Penrose would use his utmost endeavors to see that the attention of the collector of customs was brought to the affair—that is, his attention was brought to the matter.

Q. When Newton came to you the night before, you understood he was reporting to you officially, as company commander?—A. Yes, sir.

Q. Did you, in giving him this information, intend him to understand that it was in the hands of the commanding officer and it was undergoing investigation?—A. Yes, sir; to let him know everything possible was being done.

Q. What was his manner—did he seem satisfied?—A. He seemed perfectly satisfied; absolutely so.

Q. That was the next day?—A. That was Monday morning, between 10 and 12 o'clock, the Monday following that Sunday, the 6th of August.

Q. Where was this?—A. In my company orderly room.

Q. Anybody present?—A. Sergeant Harley.

Q. Your acting first sergeant?—A. Yes, sir.

Q. Any further complaint come to you from Newton about this at all?—A. Not in any way.

Q. You heard nothing further from him or from the company about it?—A. No; not a thing.

Q. Now, what was the next affair that was brought to your atten-

tion by a member of your company that you recall?—A. Following the Newton-Tate affair was the Reid affair. That was the first one that was reported to me.

Q. When did that occur?—A. That occurred on Saturday night, the 11th—pay-day night.

Q. That was pay-day night?—A. Yes, sir.

Q. I think you said that you discovered that Reid had been noisy?—A. Yes, sir.

Q. Was he partly intoxicated, or what was his condition?—A. As far as I could find out, he was. That was the way it was reported to me.

Q. Did Reid report that to you that night?—A. Reid reported the next morning. I had him in the orderly room, and Reid laughed and told me that he had gotten about what he deserved, and didn't care whether I did anything in the matter.

Q. It had come to your attention before that?—A. Yes, sir; an official report before that.

Q. And when you told Reid about it, he laughed and said he got about what he deserved?—A. Yes, sir; I asked him if he had a hard time getting out of the river, and he said——

Q. So you laughed when he spoke of his having a hard time getting out of the river?—A. Yes, sir.

Q. You were notified by Major Penrose, officially, that the Tate affair was under investigation?—A. Yes, sir.

Q. Well, did you make a formal complaint to the commanding officer, Major Penrose, about the Reid affair?—A. The next morning; yes, sir. Sunday morning, I believe it was, that I notified him about it.

Q. About the Reid affair?—A. Well, I won't answer that question positively. I do not remember now, it is so long ago.

Q. You didn't consider that it was necessary to pursue the Reid matter any further after he laughed and said he got what he deserved?—A. No. The incident, as I recall, was mentioned casually between Lieutenant Lawrason and myself. We talked of the matter and laughed about it, and investigation that I made as company commander I thought sufficient, and I let the matter drop right then.

Q. Now, you said this morning that this noise and fuss, etc., that Reid was making at that time wasn't in the hearing of this man Bates—I think you said that.—A. I said I thought not.

Q. Do you know what it was? What did your investigation show that this was—this noise, etc.?—A. The matter was reported to me in this way: Corporal Madison, of my company, was in Matamoros, and came back on the same boat with this man, and he reported to me the following morning that Reid had been very noisy and profane down there, and that he had tried to persuade him to return to the garrison; that he got into an argument over the fare with a man of Company B.

Q. What fare do you mean?—A. The passage across on the boat. And these two argued between themselves as to who should pay the fare. Madison said he could not get Reid away, and he left them there, and he afterwards heard that Reid was pushed off in the river.

Q. But you didn't consider it necessary as company commander, when Reid was satisfied, to go into it any further?—A. I simply restricted Reid to the limits of the garrison for two weeks.

Q. On account of his noise?—A. Yes, sir.

Q. What was that you said about this customs officer, Bates—you said something in the direct examination, something about his being dismissed?—A. I believe I was asked if I had ever seen Bates, and I replied, "No; not until last week; I saw him in Fort McIntosh, and heard there that he had been removed to that place on account of hitting some other man at Brownsville on the head with a revolver."

Q. This other man wasn't a soldier?—A. I couldn't say whether he was a soldier or not.

Q. But it was subsequent to your leaving there?—A. Yes, sir. I met Bates there.

Q. Now, there was another man in your company—Private Adair; he was the man that lost the pin?—A. Yes, sir.

Q. You say this was on pay day?—A. The afternoon of the 11th; yes, sir.

Q. And it was reported to you that afternoon?—A. No, sir; the following morning when I went to the orderly room.

Q. By this man Adair?—A. The first sergeant called my attention to it, and I had Adair called in the orderly room.

Q. And he reported to you, as you stated this morning?—A. Yes, sir.

Q. What did you do about that?—A. I told Adair I would investigate the matter and lay the matter before the collector of customs, but I didn't get a chance to do so, and the incident was dropped.

Q. Did you report that to the commanding officer?—A. I really couldn't say whether I did or not; I may have done so unofficially or officially, but I don't recall it.

Q. Did you tell him anything about getting his pin back, or anything of that sort?—A. I told him I would try. It was simply a matter between the customs officials and myself and Adair, and it wasn't anything that would be necessary to report to the commanding officer. I wasn't in the habit of running to him with trivial things.

Q. And you regarded that as a trivial thing?—A. Yes, sir; except the way the man was treated.

Q. Was he satisfied when you told him you would investigate it and get his pin back?—A. Yes, sir; he said, "Captain, I am perfectly willing to pay the duty on the pin, but the pin only cost 50 cents gold, and we all know that other men come across the river bringing cigars." Of course, I had no way to substantiate that statement.

Q. You didn't go into that at all?—A. No, sir; not at all.

Q. Had you any reason to believe that this incident produced any feeling or tended to produce any feeling in the company?—A. Not at all; the men all seemed in their usual spirits; very happy and contented; very cheerful.

Q. Did you consider that any of these incidents would tend to produce any feeling in the company?—A. Not at all.

REDIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. You said this morning that no men were to be allowed out after 8 o'clock on the night of the 13th of August. I think you told me that this order was given; I think you said this order was given by

the commanding officer. Have you told how they were going to prevent their going out, except by the patrol that you sent out?—A. No, sir; except we had a well-disciplined command, and these men were instructed that no man was allowed out after 8 o'clock in the evening; that any man that was found out would be arrested; then the patrols were sent out as a necessary precaution.

Q. Your company, then, was sufficiently disciplined that you could merely tell them to stay in and they would do so?—A. I think so.

Q. Wasn't that very unusual for an organization to be in such a perfect state of discipline?—A. I don't think so; no, sir.

Q. What hour was check call?—A. At 11 o'clock.

Q. A statement was made this morning that you are slightly deaf. Is that the case, Captain?—A. Yes, sir.

Q. How long ago were you examined for promotion?—A. In October or September—I have forgotten which—1904. I think it was the last week in September.

Q. Was this defect in your hearing discovered then?—A. No, sir.

Q. Did it exist at that time?—A. I never noticed it very much then.

Q. About what time did you begin to notice it?—A. About December 25 or 26 of last year.

Q. This was subsequent to the events on the night of the 13th of August?—A. Yes, sir.

Q. If I am not mistaken, you also stated that you were quite tired at the time you retired on the night of the 13th. Did you so say?—A. I don't know whether I said I was tired or sleepy; I don't remember whether I said "tired" or "sleepy."

Q. Was there any special reason for you to be unusually sleepy at this time of night?

Associate counsel for accused:

I object to the question and to the examination, on the ground that it is irrelevant.

The judge-advocate:

May it please the court, it is perfectly relevant; it is bringing out something that was touched upon in the cross-examination. I don't think there is any necessity of my going into the matter further.

Associate counsel for the accused:

I would like for the judge-advocate to explain the relevancy to this case of his going into Captain Macklin's doings that night with respect to his being tired or anything else, and, as far as my memory serves me, there was nothing said on any of his examinations about it. If he did, it was incidentally and had no bearing on this case.

The judge-advocate:

He admitted that he did make a remark that he was sleepy at the time.

Counsel for accused:

The witness said he didn't know whether he was tired or sleepy. Now, in so far as the counsel for Major Penrose is concerned, we don't make any objection to it, but we wish to go on record as saying whether Captain Macklin was tired or sleepy or not could not, by any possible stretch of the imagination, go to prove whether Major Penrose was guilty or not guilty of any act charged against him, but we, as counsel, are interposing the objection——

The judge-advocate:

The same remark could apply on the cross-examination by the counsel.

Counsel for accused:

Now, I wish to go on record as stating positively and emphatically that we did not go into anything that Captain Hay, of the prosecution, didn't open up.

The accused, his counsel, the reporter, the judge-advocate, and the witness then withdrew and the court was closed, and, on being opened, the presiding officer stated as follows:

I am instructed by the court to announce the decision that the objection is sustained. The question will not be answered.

Q. What instructions, if any, did you leave with the sergeant of the guard on your last visit to the guardhouse about calling you at any time during the night?—A. I notified the musician of the guard to call me at first call for reveille.

Q. Did you inform him or anyone else where you could be found during the night?—A. I did not. I didn't think it was necessary, as I lived in my own house. The guard manual covers the case, that in case of an alarm it is the duty of the commander of the guard to at once notify the commanding officer and the officer of the day.

Q. Was he familiar with where you lived?—A. I think every enlisted man in the garrison knew where I lived. I told the bugler of the guard the number of my quarters.

Q. Do you know to a round how much ammunition you had on August the 13th?—A. I can't tell you that; no.

Q. Did you know on August 13?—A. No; I think not; I do not remember.

Q. Did you count the ammunition to a round after midnight on August 13?—A. I did not.

Q. You don't know whether it checked up exactly?—A. I know to my entire satisfaction that the ammunition in the boxes was intact and the seals unbroken. I do not know round for round whether it was all there or not.

Q. After checking up the rifles, what became of those that were in the hands of the men actually at the wall—that is, actually on guard?—A. They were put in my company storeroom, and the guns—the big door of which I had nailed and the front door locked. It had two exits, and I instructed the company quartermaster-sergeant to stay right there and sleep right in that room.

Q. This was done at what time?—A. Some time between 2 and daylight—no; after daylight, I think, to be more correct. I had them taken out of the gun racks myself. They were still under lock and key.

Q. You have stated that some of your gun racks were broken open by force. As far as you know, was any request made by the Citizens' Committee of Brownsville to view these damaged racks?—A. Never; so far as I know.

Q. Did you ever have the keys in your possession of these gun racks?—A. No; not for any length of time; just for a few minutes.

Q. Never kept them habitually?—A. No.

Q. Who had the key to the gun racks in your barracks on the night of August 13?—A. Sergt. D. W. O. Brawner, who was noncommissioned officer in charge of quarters.

Q. Why was it necessary to break open these gun racks, if he had a key?

To this question counsel for the accused objected, as follows:

I object to that, because this witness has already shown very positively that he was not there at the time. I remember it being put directly in cross-examination, and the only purpose it can possibly serve would be to confuse the witness. He wasn't there. It has been shown conclusively that he was in his quarters at the hour this was done, and could not know.

To which the judge-advocate replied:

It is not the purpose of the prosecution to confuse the witness in any manner. It is a point, I think, that has not yet been clearly brought out—why the gun racks were broken open.

Counsel for accused:

There will be a witness here, introduced by the judge-advocate, and he is his own witness, and I have interviewed him, may it please the court, with the full knowledge and sanction of the judge-advocate, and I can state to the court officially that he is the one that will know, of all others. Captain Macklin has shown and the judge-advocate knows he wasn't there at the time this thing was done and he could not have personal knowledge of it, and on that ground the question is objectionable, and we do object formally to its being propounded in that shape.

The judge-advocate:

If the witness don't know, it certainly won't hurt for the witness to say he don't know.

The accused, his counsel, the reporter, the judge-advocates, and the witness withdrew and the court was closed, and, on being opened, the presiding officer announced, in their presence, as follows:

I am instructed by the court to announce the decision that the objection is not sustained. The question will be answered.

(The reporter, at the request of the court, read the last question, as follows:)

"Q. Why was it necessary to break open these gun racks, if he had a key?"

A. I do not know of my own personal knowledge.

Q. Did you check up the 10 rounds of guard ammunition supposed to be in the possession of each man?—A. I have already stated that I did.

Q. You have also stated that there was one key to the armracks kept in the quartermaster's storeroom, if I understood you correctly.—A. Yes.

Q. And in a field desk was the outside door key of this storeroom, locked?—A. Yes, sir; always while company property was in there.

Q. And the field desk was also locked?—A. Yes, sir.

Q. What kind of lock was there on this outside door?—A. As I remember, it was a padlock.

Q. It was a lock that could be easily picked?—A. No.

Q. What kind of padlock was it, what is known as a Yale lock or ordinary padlock?—A. Just an ordinary padlock, as used by the Quartermaster Department; I don't think it was a Yale lock.

Q. And what kind of a lock was it to this field desk?—A. The ordinary lock as is used on field desks.

Q. Are all locks on field desks the same, to the best of your knowledge—all that you have seen?—A. I should imagine so; all that I have seen were.

Q. This lock, then, would be rather easy to be opened?—A. Yes.

Q. Captain Macklin, had an extra sentinel been posted in rear of barracks B and D, and had sentinel No. 2 had his post changed so as to extend only in rear of C Company barracks and the adjoining vacant barracks, could these two sentinels have covered the ground sufficiently between the barracks and town?

Counsel for accused:

I would like to know the purpose of this; I think we are entitled to know the purpose of this. It evidently calls for expert testimony, and if he is to be introduced as an expert, we simply want to know; we want to know the purpose of it.

Assistant judge-advocate:

May it please the court, it is merely a question of fact that is asked for. Captain Macklin is an officer of considerable experience and is familiar with the ground in the vicinity of those barracks and of the conditions existing at that time, and we are merely asking him whether had sentinels been placed in those positions they could not have sufficiently covered the ground between the barracks and the town.

Counsel for accused:

I am certainly more than 7 years of age, and if I ever heard in my life a question that called for the opinion of this witness on a hypothetical case, that is it. It shows something that didn't exist at that time, and if language means anything, that is calling for expert evidence, and we simply want to know if he purposes to make an expert of this witness, and we are entitled to know. It is not a question of fact; it is a question of opinion on a state of facts that did not exist.

Assistant judge-advocate:

May it please the court, I will rest the decision as to whether this question is properly objectionable on a basis that it is simply a question of fact and one coming in the common knowledge of an officer of experience, familiar with the ground, or that it is a question of opinion.

Counsel for accused:

We haven't objected to it; we are asking for his purpose. We haven't objected to his question; he calls it a question of fact, and we call it a question of opinion; we are asking what it is, and that is clearly within our rights, and he hasn't instructed us yet.

Assistant judge-advocate:

May it please the court, the purpose of this question is to find out whether, had certain slight changes been made in the guard on the night of August 13, it would not have been possible for men either to leave the barracks and go into town or come from town across the wall and get in rear of the barracks, and as Captain Macklin was officer of the day, and that owing to that he was cognizant of all conditions existing at that time, knows what the weather was, and has had a good many years' experience in the service, I think he is fully able to tell the court.

Counsel for accused:

Now, then, we distinctly object to the question. He is not introduced as an expert, and until he is so introduced and the proper foundation laid the question is objectionable, because this is a matter that the court must determine upon the facts and not the witness; this is a matter with which this court is charged. He can show, may it please the court, and he has shown by this identical witness, what the object of that post was; he can show that no other sentinels were put on that post, if you please; he can show the distances; he can show the light; he can go into whether the darkness was there or not; but to show as a matter of expert opinion whether that could be seen by this witness he must make him an expert, because that is the thing that the court

must determine for itself. He is now trying to make this witness say that Major Penrose, as commanding officer, in not carrying out a certain thing that he assumes to be true—and he must show, may it please the court, that this man is an expert; that he has been a postman, and all those various things, to show whether he is competent to pass upon the question; and until he has done so we will object to his answering that question in that form.

By the court:

Is there any remarks by the prosecution?

Assistant judge-advocate:

There is nothing further on the part of the prosecution.

The accused, his counsel, the reporter, the witness, and the judge-advocates then withdrew, and the court was closed, and, on being opened, the presiding officer, announced in their presence, as follows:

I am instructed by the court to announce the decision that the objection is sustained. The question will not be answered.

Q. You stated that you placed your lantern somewhere before going to sleep. Will you tell the court where you placed it?—A. In my bedroom, with the door partly closed. The lantern was right behind the door—not in the room, but facing toward the hall.

Q. So that the light would not shine in your eyes?—A. Yes, sir; but still leave a light in the room.

Q. It, however, prevented the lantern from making very much of a light from the outside, did it not?—A. Unless a person got at the proper angle I doubt if they would have seen it from the outside.

Q. Did you also use the western half of your house for some purpose—that is, quarters No. 12?—A. Some of my property was stored there.

Assistant judge-advocate:

May it please the court, I am not sure whether this question was answered directly or not.

Q. What time was it when you verified your men by counting them?—A. I have answered that question, and stated that I thought it was a little after 2.

Q. Were there any lanterns in the hands of officers or men along the wall at that time?—A. No——

Counsel for accused:

I don't object to that, but I would like for the counsel—the assistant judge-advocate—to make it a little more clear. I don't want to keep the court clearing all the time, but it is clear on the face of it—here is a witness who has testified, as I understand—it is a point of time that his question relates to, that he has gone around in front of the wall, in front of his barracks, and he asks him about lanterns over in the rear of his barracks—at least it so appears to me—and if he will simply make an explanation as to time I will not object to it.

Assistant judge-advocate:

As I understand the witness, Company C was not at that time in front of its barracks, but at the time was along the wall when Captain Macklin assumed command of it.

Counsel for accused:

All I wanted to understand was when it was; it is not clear to me, and if you will make it clear to the witness I hope it will be clear to me.

Assistant judge-advocate:

I think that the record shows that about 2 o'clock in the morning when Captain Macklin assumed command of Company C that company was along the wall.

Counsel for accused:

Have you any objection to stating when you refer to?

Assistant judge-advocate:

I refer to the time Captain Macklin assumed command of his company.

Q. Were there at that time lanterns along the wall, either in possession of officers or enlisted men?—A. I don't recall seeing a lantern.

Q. There were none down near the main gate either?—A. None at all that I saw.

Q. Were there any lanterns brought on this line later on during the night?—A. You mean the skirmish?

Q. Yes, sir.—A. There were not. The men were afraid to stick their heads above the wall for fear they might be shot.

Q. Was there any effort made between 2 o'clock and daylight to detect, by means of mud on shoes or otherwise, whether any of your men had been out of the garrison at or near midnight?—A. No; everyone's feet were muddy that night.

Q. About what was the interval between skirmishers along the wall between 2 o'clock in the morning and daylight?—A. I don't recall just now how many men were on that line, but every sentinel had orders to walk to the next man to him. They were really continuous; some men walked, perhaps, 50 feet, some not more than 25 feet. I picked out the topographical features, sometimes trees were in the road, one place the wall was there and didn't need as much, and there was no specified distance between any of the men. Toward the east the men were really closer together than they were down at the wall on account of the ground they had to cover, and that ground was unprotected by houses or buildings or anything except the wire fence.

Q. It was fairly dark at this time, wasn't it?—A. It was so dark you couldn't see a man 10 feet.

Q. That being the case, why couldn't men clean their rifles in the dark while they were on post at considerable intervals?—A. They didn't have the means at hand to do it.

Q. But yet in the butt of each piece there is a thong and brush that may be used in cleaning the bore of the piece, is there not?—A. There is, in the butt of each piece.

Q. You stated that you checked up the rifles in the gun racks that night. Couldn't individual men of your company have cleaned their rifles while along the wall or along the skirmish line during your absence at this time?—A. No; because they were not there; they were assembled in the front of the company, standing there under the direction of the first sergeant.

Q. At what time was this, please?—A. Probably 2.15; it only took a few minutes to check the rifles in the quarters. I don't know the exact time but I should say between 2 and 2.30.

Q. How many rounds of regular steel-jacketed ammunition and how many of guard ammunition did each man have when you made

your inspection of ammunition about 7.30 in the morning of August 14?—A. Each man had 10 rounds of guard ammunition; just how much of the other each man had I do not know, but I checked off the 1,200 rounds, and the check of the 1,200 rounds was correct.

Q. Do you know of your own knowledge whether the collector of customs returned to Brownsville before the night of August 13 or not?—A. I have heard that he did.

Q. Did any of the three men—Newton, Adair, or Tate—ever secure any redress for the wrongs that they alleged had been committed upon them by customs officials or not?—A. No.

RECROSS-EXAMINATION.

QUESTIONS BY COUNSEL FOR ACCUSED.

Q. Captain Macklin, you stated that you first noticed your deafness about December 25; that was after you were wounded, as you testified, twice at El Reno?—A. Yes; my head has bothered me ever since that night; the shock was very great.

Q. And is it better or worse than it was at that time, or do you notice any difference?—A. It seemed to me that it has been worse within the last two or three weeks.

Q. You have noticed it more the last two or three weeks?—A. Yes; because some of the nerves in the right side are paralyzed.

Q. Well, you said everyone's feet were muddy—had it been raining around Brownsville, so it would make it muddy around there?—A. It was very muddy; the roads were not very well graded when first we went there and it was muddy there; where it was graded there I got in over my ankles in some places.

Q. That night?—A. Yes, sir.

Q. So that mud was a familiar thing there?—A. Yes, sir; most anywhere except on the main parade.

QUESTIONS BY THE COURT.

Q. Were Newton and Lipscomb's statement to you about the Tate affair given under oath or not?—A. They were reported to me as company commander; the statement of Lipscomb was afterwards put under oath. Newton, we had no opportunity to get his on account of his being confined here at Fort Sam Houston.

Q. Was Reid's statement made to you under oath?—A. No; it was made to me verbally as company commander. I was unable to get any further statement from him on account of being in confinement at Fort Sam Houston.

Q. You say you reported three men out on pass. When did they come in?—A. They came in the next morning between first call for reveille and the assembly for reveille.

Q. Where did the noncommissioned officer in charge of your quarters sleep on the night of August 13?—A. He slept in my company quarters, so far as I know.

Q. Do you know where the noncommissioned officer in charge of your quarters on August 13 kept the key that night?—A. The noncommissioned officer in charge of quarters is responsible for the discipline around the quarters; also for the arms under his charge, and

he is supposed to keep the key in his pocket. I do not know further whether he did or did not; but I presume he did, for he was a very good sergeant.

Q. How many cleaning rods for rifles are provided for use of your company and where were they upon the night of August 13–14, 1906?—A. The exact number I can not tell you, but it is not less than four and probably not greater than seven. The chief of each section was supposed to have two cleaning rods apiece, and they kept them in the small room that they slept in. I had in my barracks one large dormitory and four smaller rooms that were used for the noncommissioned officers.

Q. What troops did the battalion of the Twenty-fifth Infantry relieve at Fort Brown, and with what rifles were they armed?—A. The Twenty-sixth Infantry. I do not know what rifle they carried; I don't recall ever seeing them—not at that time, I did later.

Q. Could numerous empty cartridge shells and empty clips been obtained by outside parties from your company in any way?—A. Not from my company, because I had none. I had turned them all in before leaving Niobrara; I had shipped them to the arsenal at Rock Island.

Q. When you inspected ammunition did you inspect bandoliers; if so, with what result?—A. The box of ammunition that was opened was all of bandoliers. I don't recall that I found all the bandoliers, but I found all the ammunition. The ammunition was divided up among the men, some men getting 10 rounds or some 20. There was no uniform amount in the hands of the men, and the only way I could do was to check the whole amount.

Q. Were there any men posted near the sink where you found the shells? If so, to what company did they belong?—A. Does that apply to that night or the next morning?

The presiding officer:

If there is no objection, it might be amended and say "that night."

Q. Were there any men posted near the sink that night where you found the shells?—A. Not until my company went on guard. When it went on guard there was a man immediately in rear of that place which looked up the alley. They belonged to Company C.

Q. Were any shots fired by any soldiers after the line was established along the wall after you took command?—A. No; none at all.

Q. Was the order given you at 1.20 a. m. to inspect your arms given in the presence and the hearing of the company?—A. No; my company was about 60 yards away. I don't think any enlisted men heard the order at all—in fact, I am satisfied they did not.

Q. When the alarm was sounded, do you know whether any of the sentinels discharged their pieces, or was it reported to you as officer of the day that they did?—A. I was informed by the commanding officer that sentinel on post No. 2 discharged his piece in the air, giving the alarm.

Counsel for accused:

If the judge-advocate is through, we want to clear up one thing.

The judge-advocate:

We are through.

RECROSS-EXAMINATION.

QUESTIONS BY COUNSEL FOR ACCUSED.

Q. Did you personally take the affidavit of Lipscomb?—A. Lieutenant Hay prepared his affidavit, under my direction, and it was sworn to by Captain Lyon, summary court.

Q. If Private Newton made an affidavit about this, you didn't know anything about it?—A. I do not know. I put that entire thing in Lieutenant Hay's charge after I had taken the original statements.

Q. You have just testified about posting men near the sink, and you stated, as I understood you, that no men were posted there until after C Company was extended. Might not men have been posted—men of Company B been posted there before you arrived?—A. Yes, sir. I am only speaking of the things that I know occurred after my company went on guard—in fact, we relieved men along there about that time, as I recollect it.

Q. Did you intend your answer to refer to anything except your own company?—A. No, sir; nothing at all; because I would have no knowledge of that.

Q. You didn't see any shells inside that next morning?—A. No, sir; I looked for them, but there were none.

Q. That is what I understood you to say, that all the shells you found were outside?—A. All the shells and the clips that I found were in a radius of 12 inches—not over 15 at the outside—right in one bunch.

Q. And that was in the spot you pointed out this morning?—A. Yes, sir.

(The witness was then excused.)

The judge-advocate:

For the benefit of court and counsel I will say that the former witness whose cross-examination was not completed a few days ago is without, and if the counsel desires I can have her called in.

Counsel for accused:

Yes, sir; we are ready for her.

The witness, LEONARDA SANCHEZ, was reminded that she was still under oath, and was further cross-examined by counsel for the accused.

The judge-advocate also reminded the interpreter, Tarver Bee, that he was still under oath.

(The examination was conducted by counsel asking the witness questions in English and she answering in Spanish through the interpreter.)

Q. What time was it when you went in the garrison that night?

The interpreter:

She says she wants an interpreter so she can understand.

Q. How many men were at the guardhouse when you and this woman went there that night?—A. (No answer.)

The presiding officer:

Does she understand that the counsel desires her to answer the questions?

(The interpreter informs witness, and replies that she says she will answer what she understands and what she don't understand she can't answer.)

Q. What time of night was it when you went over into the garrison that night with this colored woman?—A. Between 11 and 12 o'clock.

Q. How long did you stay over there that night?—A. Half an hour.

Q. How do you know it was between 11 and 12 o'clock? Might it not have been earlier?—A. The hour struck in her clock.

Q. What hour was it that struck in your clock?—A. I was in my house.

Q. What hour was it that struck in your clock in your house that you noticed?—A. It was 12 o'clock when we left there.

Q. Then you were mistaken when you said you left there between 11 and 12 o'clock?—A. I don't know what time it was; it was 12 o'clock when I left there.

Q. What part of the hospital was it that you went to that night with that woman?—A. In front of the hospital.

Q. Who did you talk to there?—A. The negro there as the guard.

Q. Were there any other men there near this guard at this time?—A. No.

Q. You are sure about that?—A. No one else there but that man that was on guard there.

Q. Did you go to the guardhouse before you went to the hospital or not?—A. I first went to the guardhouse.

Q. Where were the guard at the time you went there? How many men were there in the guardhouse or outside the guardhouse when you went there?—A. I didn't see but two men outside there.

Q. What were these two men doing at the time you saw them?—A. They put that negro woman inside of the room.

Q. Were there any men outside the building of the guardhouse scattered around anywhere?—A. No.

Q. You are sure about that, are you?—A. Yes, sir.

Q. You are certain that this negro woman when she spoke to the guard in front of the hospital—are you certain what she said to him?—A. Yes; she wanted to talk to a man who was a cook.

Q. Did she say anything about the shooting up of the soldiers at that time?—A. She didn't talk to any of those men that night.

Q. This colored woman didn't talk to any of those men that night in front of the hospital?—A. With only one man, but she wanted to talk to the cook.

Q. Did you say you heard this colored woman talking to the guard in front of the hospital a while ago?—A. Yes; to one man.

Q. What did she say to this man when she was talking to him?—A. She said she wanted to see a man that worked in the kitchen.

Q. Didn't she say to this guard that night that she was afraid the soldiers were going to be shot up?—A. Yes, sir; she told a negro not to be frightened; between 11 and 12 o'clock there were going to be shooting in the town.

Q. But when this woman was talking to the soldier that was on guard out in front of the hospital, didn't she tell him that she came in because she was afraid the soldiers were going to be shot up?—A. No.

Q. You are sure about that?—A. She didn't speak about that at all.

Q. Said nothing at all about that.—A. No.

Q. Did she say anything to that effect in front of the hospital?—A. She only said that she wanted to see that man; that is all.

Q. How many rooms in this house that you lived in?—A. Two rooms; one that woman lives in, and the one I lived in.

Q. Have you no children?—A. I haven't; the negro has one small one, that size (indicating).

Q. Are you sure that you have no child?—A. Her child doesn't live with her; she lives in another house.

Q. But you have a child, then?—A. Yes, sir.

Q. How old is it?—A. Thirteen years old.

Q. Is it a girl or boy child?—A. Woman; young lady.

Q. How long have you been living with soldiers?

To this question the judge-advocate objected, as follows:

I object to that question; it is manifestly improper.

To which counsel for accused replied:

May it please the court, I propose to show what this woman's record is and I expect to show it—by her—and for the purpose of showing the class of witness she is and the class of witnesses that is brought before you; I have a right to do that, clearly.

The judge-advocate:

In reply I should like to read from Wharton's Criminal Evidence, ninth edition, section 486. (Here reads.) I don't know whether it is the purpose of the counsel to attempt to show that or not, but if such is the purpose, I object at this point and object to that question especially which has just been asked.

Counsel for accused:

We purpose to show who this woman is. She says she has a child; we have a right to know whether she is married or not, and whether she is living with her husband or not, and what her general record is as to chastity and everything else. All goes to affect her credibility.

The judge-advocate:

I read now from McKelvey on Evidence, page 160, beginning with the words "In case of impeachment," and ending with "in which it has been allowed." I have nothing further to say.

The court then took a recess to enable counsel for the accused to look up the law on this question, until 4.35 p. m., at which hour the members of the court, the judge-advocates, the accused, his counsel, the witness, and the reporter resumed their seats.

Counsel for accused:

We will withdraw the question for the moment.

Q. Were you married at the time your child was born?

To this question the judge-advocate objected, as follows:

I object to that question also; it is tending in the same direction.

To which counsel for accused replied:

Now, may it please the court, we place this solely upon the ground of attacking the credibility of this witness. This is not to affect necessarily the character of the witness, but it is a question of fact, and if this witness denies that, then we have a perfect right to come in on a collateral fact and attack her veracity directly as to her denial of this particular fact. That question in

itself is not an attack on her general character; it is a question of fact. "Were you married at the time your child was born?"

The judge-advocate:

I base my objection upon the principle of law just read, and ask for a ruling of the court, and not only upon this one question, but any other question that had been asked touching the character of this witness as to chastity.

The accused, his counsel, the judge-advocate, the witness, and the reporter then withdrew, and the court was closed, and, on being opened, the presiding officer announced, in their presence, as follows:

I am instructed by the court to announce the decision that the objection is sustained. The question will not be answered.

Q. Were you living in Brownsville at the time the Fourth Infantry was stationed there?—A. Yes, sir.

Q. Did you know a Sergeant Rose, of the Fourth Infantry?—A. She says that ain't her business to talk about soldiers; she has other business here.

Q. Did you know a Private Moore, of the Fourth Infantry, and afterwards of the Hospital Corps?—A. She says she don't know anything about that, and she says if she knew them or didn't know them, she hasn't got a word to say here.

Q. Did you know a Sergeant Watts, Company M, Twenty-fifth Infantry?—A. She says she don't know, and it's no business of those gentlemen here, and she can't talk on that subject.

Counsel for the accused:

I think we are entitled to an answer as to whether or not she knew these people.

The judge-advocate:

May it please the court, the tendency of these questions are along the same lines and are objectionable, and I ask again that counsel desist from this form of examination.

Q. Do you know a man by the name of Van Kampman, of the Fourth Infantry?—A. She says, "I will not say anything about those soldiers; I will only answer the question asked before."

Q. Did you know any soldiers of the Twenty-fifth Infantry?—A. Yes; she says that she knows a good many soldiers, because she was the woman that washes the clothes for them.

Q. Tell us who you knew of the Twenty-fifth Infantry.

The judge-advocate:

May it please the court, may I again ask the court to again instruct counsel not to pursue this class of examination that the court has ruled out?

Counsel for accused:

Here is a woman that comes in and testifies that she knows one member of the Twenty-fifth Infantry, and we are testing her knowledge. Now, I insist that she be directed to answer this question. This doesn't attack her veracity; we are entitled to know whether she knew those other men or not. She said she did, and we insist upon that question and request the court to instruct her to answer it.

The accused, his counsel, the judge-advocates, the witness, and the reporter then withdrew, and the court was closed; and, on being opened, the presiding officer announced, in their presence, as follows:

I am instructed by the court to announce the decision that the objection is sustained. The question will not be answered.

(The reporter read the last question, as follows:)

"Q. Tell us who you knew of the Twenty-fifth Infantry."

The court then, at 5 o'clock p. m., adjourned until 10 o'clock a. m., February 27, 1907.

CHAS. E. HAY, Jr.,
Captain, Acting Judge-Advocate, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., February 28, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocates. The accused, his counsels, and the reporter were also present.

The reading of the proceedings of February 27 was dispensed with.

The judge-advocate then read to the court a letter written, pursuant to instructions from the court, to the chief quartermaster, Department of Texas, regarding blueprint, and also read first indorsement thereon, which letter is hereto appended and marked ——.

By the judge-advocate:

The maps referred to in this indorsement were, I understand, submitted to counsel yesterday afternoon, and the messenger reported to me that these maps also were unsatisfactory.

By counsel for accused:

It was reported to me yesterday afternoon, and Major Penrose was present. We were out in front of the building, as we were going home, and we didn't take time to examine it with that care we would ordinarily have done; but we did take time to examine it and ascertain that certain buildings were not there. One building, at least as I recall it, was placed on the wrong side of the guardhouse, and we simply said as an accurate map it failed to fill the requirements. I do think this: That any of those plats would be better than this collection of misinformation, because it shows approximately where the hospital is and shows the buildings which are constantly referred to in the rear, or what is known as the noncommissioned officers' quarters, stables, etc. It has been testified that a certain sentinel, to wit, No. 4, was posted around that, and it has been described. Our purpose is to get information accurately before the court. We are willing the court should examine or utilize these if they will get an understanding of what is lacking. I think the maps and certain blueprints which were shown me, and which it took three of us to hold, the wind was blowing so at the time, would give a good representation of the country, and also certain houses that are in evidence.

By a member of the court:

I would like to ask if the accused, who is thoroughly familiar with the post, can not correct it and sketch in parts that are lacking.

By the accused:

I will state to the court that I think I can put in accurately enough the location of any building that is missing for all practical purposes. I am speaking of the blueprint we had yesterday. There is no room on this map to do it at all.

By the judge-advocate:

There is no objection to that whatever. I am willing to trust to the integrity of the accused, because I am unfamiliar with the location.

By the president of the court:

It will be perfectly satisfactory if the blueprint is corrected so as to indicate with sufficient accuracy the location of the necessary buildings to enable the court to understand the testimony that has been given, or that may be hereafter given before the court.

By counsel:

If the court is willing to leave that to us, there are five officers who were stationed there, some among the Twenty-sixth Infantry, and we will try to take one of those maps and try to get it sketched in, with their help, if there is no objection by the judge-advocate.

By the president of the court:

That is the wish of the court, Mr. Judge-Advocate.

By the judge-advocate:

I understand, then, that the counsel will be willing to do that.

By the counsel:

Yes; will be very glad to do it.

Mr. Tarver Bee was reminded that he was still under oath as interpreter, and he then reminded the witness, LEONARDA SANCHEZ, that she was also still under oath.

CROSS-EXAMINATION CONTINUED.

Q. How long had you known this man that came into your house, as you stated, on that day?—A. He was there in the morning to move this nigger woman.

Q. How long had you known him; how often had you seen him before that?—A. Twice.

Q. What were the two occasions on which you had seen him before this?—A. In the house where the negro woman lived first.

Q. What dates was it, with respect to the 13th of August last, that you saw him on these two occasions?—A. What day did the negro move?

Q. Where did this negro woman live, with respect to your house?—In the house of Nogal Fernandez.

Q. How far was that from the house you were living in at that time?—A. Afterwards she moved to her house.

Q. What time of day was it when this man came to your house in the afternoon of that day?—A. About 4 o'clock.

Q. You said he was there in the forenoon of that day. What time of day was it?—A. Four o'clock.

Q. Four o'clock in the morning of that day, was it, when he came there?—A. In the morning the negro woman went to rent her house.

Q. What date was that the negro woman came to rent your house?—A. I do not know what day it was.

Q. Was it before or after the date on which she came there in the afternoon?—A. What do you say?

Q. Was it before or after the day when he called there and had this conversation with the negro woman?—A. The same day that

the soldiers shot in the town the nigger woman moved in the morning.

Q. What was the name of this colored soldier that came to your house that day?—A. I do not know his name.

Q. How often had you seen him before this time when he came in there?—A. Because I worked with the negro woman.

Q. Did you hear any other conversation that day between this soldier and the negro woman?—A. I only saw the negro in her house that day.

Q. Can you tell us any other conversation that you heard between the two that day?—A. What do you say?

Q. Did you hear any other conversation between this negro soldier and that negro woman that day?—A. I do not understand what you say.

Q. How many times had you seen this negro soldier previous to 4 o'clock on that day?—A. In the morning when he moved this negro woman and at 4 o'clock in the evening.

Q. What time in the morning was it you saw him and whereabouts was it?—A. In the morning, at 10 o'clock.

Q. Whereabouts was it you saw him that morning?—A. What?

Q. (Question repeated.)—A. What did you say?

Q. Did you have any conversation with him that morning at 10 o'clock?—A. I understand some words and others I do not understand.

Q. Did you hear any conversation between the negro soldier and the negro woman that morning at 10 o'clock?—A. What did you say?

Q. (Question repeated.)—A. I do not understand what you say.

Q. Did you hear any further conversation between the negro man and the negro woman in your house that afternoon at 4 o'clock, further than you have testified to?—A. I saw no one but that man in the house; that's the only one I saw.

Q. How long did this man you say you saw there remain in the house?—A. All the time he was there changing her furniture from the house.

Q. That was in the morning, was it?—A. In the morning.

Q. How long did he remain in your house there that morning?—A. He fixed the carpets for the negro woman and helped her.

Q. Did you hear any conversation between them that morning of any kind whatever?—A. No.

Q. Who else was in your house at the time this colored man was there with the woman that morning?—A. Only myself and the negro woman and the man.

Q. Do you swear there was no conversation between the negro woman and the negro man in your hearing that morning?—A. No; only us three were there; there was nobody else there.

Q. Then, you did not hear any conversation at all that morning between the negro man and the negro woman?—A. No.

Q. Did you hear any further conversation between this negro man and the negro woman at 4 o'clock when they were there?—A. At 4 o'clock, when he came from the quarters, he told the negro woman not to be frightened; there was going to be shooting between 11 and 12 o'clock; there would be shooting in the town.

Q. Did you hear any other conversation between the two at that time than you have just narrated?—A. He told her that when she heard shots to go to the jail (she said "calabos," that means cell.)

Q. Did you hear any other conversation between the two at that time?—A. No; because the negro woman told the man to shut up his mouth, because she understood English. She, the witness.

Q. Was there anything else she said at that time?—A. No; I only heard that.

Q. How long did the negro woman remain in the house at that time?—A. After he was there, went to the quarters and came back and she didn't see him any more.

Q. How long after he went to the quarters before he came back?—A. Went very soon.

Q. How long?—A. I can't tell. He talked to her, and very soon he left to the quarters.

Q. What did he say to her at this time?—A. When he came back he told her not to be frightened, because between 11 and 12 o'clock there would be shots in the town; that's all he said.

Q. That's twice he told her that, was it? When was it he told her this thing the second time you heard it?—A. What does the gentleman say?

Q. You have just said he went away from there at 4 o'clock and came back again; said there was going to be firing that night.—A. When he told her that he didn't come back any more; he went there at 4 o'clock.

Q. Did you ever see this man again—this soldier?—A. Yes, sir; I saw him afterwards at Lieutenant Rell.

Q. How many times have you seen this man altogether?—A. Only once.

Q. Did you ever see and talk to any other soldiers of the Twenty-fifth Infantry?—A. No.

Q. Sure you never saw any other soldiers of the Twenty-fifth Infantry?—A. No.

Q. Are you generally known by the name of Chino?—A. No.

Q. You are sure you are not generally spoken of by the name of Chino?—A. They call me China.

Q. You are generally known by that name, are you?—A. No.

EXAMINATION BY THE COURT.

Q. When the negro soldier told the negro woman that there would be shooting in the town that night between 11 and 12, did he say who would do this shooting?—A. No, sir; he did not say.

The judge-advocate here addressed the court as follows:

I have a document to introduce in evidence and will preface this by reading from Manual for Courts-Martial, 1905, page 45, footnote 1: "Copies of any records or papers in the War Department or any of its bureaus, if authenticated by the impressed stamp of the bureau or office having custody of the originals (e. g., 'Military Secretary's Office, Official Copy'), may be admitted in evidence equally with the originals thereof before any court-martial, court of inquiry, or in any administrative matter under the War Department." This is a quotation from General Order 91, A. G. O., 1900. I propose to introduce a letter written by the accused on the 15th of August, 1906, and before reading it will pass it to the counsel in order that he may see it contains the stamp.

By counsel:

We have no objection.

(The judge-advocate then read said letter to the court, a true copy of which is hereto appended and marked ——.)

By the judge-advocate:

If the court wishes to examine this, it may do so. I wish to caution the court, however, that only such portion as has been read is in evidence.

By the counsel:

We shall object to that.

By the judge-advocate:

It is a practice well known to civil law, may it please the court, that such a custom is frequently followed, the jury being cautioned to take cognizance of only what is in evidence.

By the counsel:

We object to that at this stage. Certainly anything you introduce as evidence and goes in we are glad to have the court examine.

Maj. A. P. BLOCKSOM, United States Army, a witness for the prosecution, was duly sworn, and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Will you please give your name, your rank, and your present station?—A. A. P. Blocksom; major, Inspector-General's Department; station, St. Louis, Mo.

Q. Do you know the accused? If so, state who he is.—A. I do. Maj. C. W. Penrose, Twenty-fifth Infantry.

Q. Major, will you tell the court what service you have had and of what character?—A. I have been in the cavalry most of my service; the last two years in the Inspector-General's Department.

Q. What length of service, please, Major, have you had?—A. I have had nearly thirty-four years, including West Point.

Q. Has all your service consisted of service with the cavalry and Inspector-General's Department?—A. It has.

Q. Have you ever had any foreign service?—A. Yes; I have had service in Cuba, China, and the Philippines.

Q. You are familiar with the arms now used by the Army of the United States—small arms?—A. Yes.

Q. Ammunition?—A. Yes.

Q. Will you state to the court what kind of rifle is now used and the kind of cartridge, if you can?—A. The rifle now used is what is called the Springfield—new Springfield, .30 caliber. It fires a bullet .30 caliber.

Q. You stated your station—your present station—was St. Louis, Mo. What official title have you?—A. I am assistant inspector-general of the Southwestern Division.

Q. Have you ever been in Brownsville?—A. Yes.

Q. When did you go there, and under what circumstances?—A. I went there twice this last six months.

Q. When was the first time you went there?—A. The first time I went there was in August.

Q. Do you remember the exact date?—A. I arrived there on the night of August 18, about 6.30, and left there on the 4th of September.

Q. By whose order did you go to Brownsville, Major?—A. By order of the commanding general Southwestern Division.

Q. For what purpose did you go there?—A. I went there to investigate the shooting which occurred in Brownsville on the night of August 13 and 14.

Q. And the second time by whose orders and for what purpose?—A. I went by order of the Secretary of War, in company with Mr. M. D. Purdy, assistant to the Attorney-General United States, to take depositions about the same occurrence.

Q. About what date was this second visit?—A. I arrived in Brownsville on the 26th of December and left there on the 2d of January.

Q. Did you ever have occasion to go to the house of one Francisco Yturria?—A. Yes; I went there.

Q. With whom did you go, Major?—A. I went there with a young man, I think, by the name of Moore, and somebody else, whom I have forgotten. This was within a day or two after my arrival. I think it was the next day possibly, or the day after.

Q. Was this during the August investigation?—A. Yes; during the August investigation.

Q. Do you remember whether or not Mr. Teofilo Martinez was present?—A. He was in the house.

Q. What did you and he do? Please state fully your experiences in that house.—A. He told me he was care taker for Mr. Yturria during the absence of the family. He said that on the night of August 13, while sleeping on the porch in front of the kitchen——

By counsel for accused:

I think we shall have to object to that as hearsay evidence. The witness was here, and it could have been shown what he said. No basis laid for any such evidence whatever in the original examination.

By the judge-advocate:

The testimony is already before the court, but in order not to take up the time by a closure, which I see would take some time, I will caution the witness not to indulge in hearsay.

Q. Did you examine the house with Martinez on this day?—A. I did.

Q. What did you find, please?—A. I found the marks which were alleged to be those of four bullets, which Martinez told me had been fired into the house.

By counsel:

Was Major Penrose present at this time?

By witness:

He was not. This was during an official investigation of mine.

By counsel:

Major Penrose was not present?

By witness:

He was not.

By counsel:

Was he present in the post?

By witness:

Yes; he was present in the post.

By the counsel:

We will have to object to it.

Q. Describe the appearance of these bullet holes you saw there, please, Major.—A. One of the bullets had struck the edge of a lintel, which was a beam about 4 by 6 or 4 by 4 inches on the edge of the roof—under the edge of the roof—on top of two wooden pillars on the porch; where it struck the edge it made a semicircular, almost semicircular indentation; possibly it was a little more or a little less than semicircular. It touched the whole of the under surface of the lintel. Where it left the lintel on the side toward the house it simply scraped the bottom. I climbed up on the railing of the porch and looked along this groove from the inside to the outside. It pointed directly to the left of the center of the upper back porch of B Company.

Q. Did you examine the alignment of any other holes at this or at any other time?—A. I examined the alignment of two other bullet holes, and found they approximately pointed to the same spot. I could not tell exactly because I did not get between the marks, but I got under them, so I could tell they were vertically in line.

Q. During your August inspection did you have occasion to go to the house of one Mr. G. W. Rendall?—A. I did.

Q. Did you make a similar investigation of this house?—A. I did.

Q. If so, with what result?—A. I found the marks of one bullet which had evidently come from a point almost north of the southwesterly end of D Company barracks. It had entered the house, I think, a little above the window of the corner room—that is, the room which was on Elizabeth street and the road next the barracks, upstairs, and had left the room—that is, had gone through the opposite wall, at very nearly the same height. The bullet must have gone nearly parallel, as I remember it, or nearly perpendicular to Elizabeth street.

Q. Was this shot apparently fired from the ground or not?—A. I think it must have been fired from the ground, and from some distance. My remembrance is that where it left—that is, where it went through the opposite wall—it was somewhat higher than where it entered, although I am not certain about that.

Q. Coming back to the Yturria house; did you visit that house in December?—A. I did.

Q. Did you find anything of interest at that time?—A. At that time I found a bullet in the dining-room door. I don't remember whether I saw that bullet or not in the August investigation, but I did see the mark of it on the door. Mr. Yturria himself pointed the bullet out to me in December.

Q. What did you do with this bullet, if anything?—A. I saw a Mexican boy trying to get this bullet out of the door with a butcher

knife. He worked at it for several minutes. I made him get me a hammer and I inserted this butcher knife into the hole where the bullet was—pounded with the hammer until I got a purchase with the point, and plied the bullet out.

Q. What kind of a bullet was it?—A. A Springfield rifle bullet.

Q. Jacketed or otherwise?—A. Jacketed.

Q. What did you do with this bullet, Major?—A. I gave it to Mr. Purdy.

Q. Do you know where it now is?—A. I think it is in Washington, there with the collection of other bullets, shells, etc.

Q. Did you visit Mr. Rendall's house in December? If so, with what results?—A. I did not visit his house in December. At least I did not go inside.

Q. At the time of the August inspection did you go into the house of one Louis Cowen?—A. Yes; I went in that house several times.

Q. And what did you see there?—A. I saw there the marks of a number of bullets which had entered the house, I think all of them came from the alley at the side of the house—that is, on the east side of the house.

By counsel for accused:

We shall object to any further testimony about bullets in the Cowen house. There has been not one scintilla of evidence to show that bullets have been in there, and until there is such evidence this witness, who is clearly an expert, has no right to testify about them.

By the judge-advocate:

There has been evidence that they were fired in that direction.

By the counsel:

But I appeal to the record, and shall object to any further testimony from this witness on that point.

By the judge-advocate:

As the court is doubtless well aware, a number of witnesses—I think four or five, I don't know the exact number—have testified that they saw men—and they specified what kind of men—firing and discharging rifles with their muzzles not very far from the Cowen house; and it is reasonable to assume that after the discharge of these rifles bullets entered the Cowen house.

By the counsel:

We make no assumptions in the trial of an accused for an offense of any kind. You can assume nothing in a trial, and until bullet holes have been shown to have been made in this house I shall object to this witness testifying to anything about it. There is not one scintilla of evidence that bullets struck the Cowen house, and I appeal to the record—and I have watched very closely for it. We assume nothing, may it please the court. We object to that.

By the judge-advocate:

I ask for a ruling of the court on the question.

The accused, his counsels, the witness, the reporter, and the judge-advocates then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce the decision that the objection is not sustained, and the question will be answered.

(The question and so much of answer made were read.)

A. (Continued.) In the walls, windows, shutters, and one or two places in the fence there were bullet holes, which indicated to me that

about eight or ten bullets had been fired into the house. That was purely an estimate on my part, as I did not trace the course of all the bullets. These bullet holes were similar to those that went into the Yturria house—small caliber, I think a .30 caliber—from appearance and from a high-powered rifle. Some of these bullets went through two or three walls of the house. They entered about, I should say, 4 or 4½ feet from the floor of the house, and nearly all of them ranged upward. I saw one bullet which was shown to me by the daughter of the Cowens. This bullet had struck the wardrobe, I think in the room in front of the back bedroom——

By associate counsel:

I should like to ask the witness how he knows that.

By the judge-advocate:

How he knows what?

By the counsel:

The witness is intelligent. Read the record.

(Last part of witness's answer was read over.)

A. I saw from the marks of it that it had struck there.

By associate counsel:

This particular bullet, I mean, Major.

A. Yes; this particular bullet. It had struck the glass in the wardrobe door and had evidently dropped to the bottom between the glass—mirror it was—and the back of the door, and was at the bottom of the door when I entered the house last. This was in the December investigation.

Q. What kind of glass was this, Major?—A. I think it was French plate; it was pretty heavy.

Q. Do you know about how thick?—A. I should say it was—I am not positive at all—I think it was between, I should say, about one-fourth of an inch, possibly more.

Q. Did you ever take this bullet and examine it?—A. I did.

Q. And what was its appearance?—A. It was flattened at the base, I thought, from having struck the mirror while tumbling. There were marks on the partition between this room and the rear room which indicated that the bullet had gone diagonally through the partition, tumbled, and struck the mirror.

Q. What kind of a bullet was this?—A. It was a Springfield rifle bullet.

Q. Jacketed, or otherwise?—A. Jacketed.

Q. Did you see anything else at either the August or the December inspection in the Cowen house?—A. I saw the pieces of a jacket, which were shown by Mrs. Cowen at the December investigation. There were two or three pieces; they looked something like bent tin, although they were not the color of bent tin; they were more copper color; I think there were two pieces, evidently from the—a Springfield rifle bullet or a similar bullet.

Q. Did you cut out and remove any portion of the house or furniture?—A. I did not.

Q. Did you see this done in your presence?—A. No; I did not see it done. The girl, Miss——

By the counsel:

If he didn't see it, and don't know about it, we don't want to hear about it.

A. I saw this bullet, however, in the bottom of the door where it had dropped.

Counsel here asked:

The one you have testified about just now?

A. Yes. At least I think I saw it; I won't be positive; there was a space between the bottom of the mirror and the bottom of the door.

Q. Did you have occasion on your August investigation to go to the Miller Hotel?—A. I did.

Q. What did you there see?—A. I saw the marks of at least six bullets. One on the back of the house, which was evidently fired from the alley into the corner room on the second floor of the hotel. This corner room was on the corner of Thirteenth and the alley. This bullet first entered the screen of the window about 4 feet from the ground. I don't remember whether the sash was up when I looked at it or not, but I pulled it up if it wasn't up, until a bullet hole in the lower part of the window sash and a bullet hole in the ceiling were on a line with the bullet hole in the screen. The bullet was evidently a small bullet like the other ones. It had been fired from a point not far from the window toward Thirteenth street.

Q. How high is that window from the alley; that is, from the level of the alley?—A. I should say the floor was 10 or 12 feet; I am not positive about that, and where it went through the screen I should say it was about 4 feet from the floor. The sill of the window was probably 3 feet above the floor.

Q. Did you find any other bullet marks at the Miller Hotel?—A. On the third floor, in the corner window next the alley on Thirteenth street—that was the room directly above the one I have just described—there were the marks of a bullet which had evidently come from Thirteenth street and about the corner of the alley on the other side of the street. This bullet went through the frame of the window—that is, the part which is attached to the wall on the west side of the window—went through this window, went through a door on the west side of the room, and up into the ceiling in the hall outside. I judged from these three marks as to the locality of the bullet where the bullet was fired from. Between that window and the next window west and directly under that window there were two bullet marks. I may possibly be mistaken about that window; it may have been the second window; I don't remember. Then between a third window and a fourth window there was the mark of another bullet. Within 2 or 3 inches of the first bullet there were the marks of another bullet in the bricks, making five bullets in all on that side of the house—five bullet marks. When I was first down there there was another one pointed out to me, but I don't know whether that was a bullet mark or not; it was in the vicinity of these others.

Q. Did you have an opportunity to examine the register of the hotel?—A. Yes.

Q. Who occupied these rooms on the night of the 13th, according to the register?

By counsel for accused:

We object to that. The best proof and only proof of any written document is the document itself. That is available—in the hands of the party, and this is clearly hearsay evidence. We object to it and ask for a ruling of the court. That is fundamental and does not require any argument at all.

By the judge-advocate:

I will withdraw the question to save time.

Q. Later on, at the August investigation, did you have occasion to go to the house of Mr. Fred Starck?—A. I did.

Q. Please tell what you saw there.—A. I saw there on the outside of the house the marks of four or five bullets, evidently of the same size as the others which I have described.

Q. Did you see any bullets?—A. I did not see any bullets.

Q. Did you have occasion to visit, officially, Mr. Tillman's saloon?—A. I did.

Q. And what did you find there?—A. I found there the marks of, I think, four or five bullets. One in the brick wall to the right of the cistern in the back part of the saloon as you enter from the rear. Evidently this bullet had been fired from a point near the door.

Q. Do you know whether or not this saloon is also called the Ruby Saloon?—A. It is.

Q. What else did you find there, Major, please?—A. I found the marks of some bullets on a lot of boxes which were in the front part of the saloon to the left of the door as one enters from Elizabeth street, and I saw the mark of one bullet which had gone through one of the windows in the front, and I think I saw the mark of one on the wall, or very near the wall, very near the corner, although I am not positive about that last.

Q. Did you follow the trace of any of these bullets to see where they ultimately lodged?—A. I don't know, except from hearsay, where one of them went, and I don't know actually where any of them went.

Q. Now, did you have occasion at the time of your August investigation to go to the post and question Major Penrose about the occurrence of the night of August 13?—A. I did.

Q. Do you remember whether he said anything to you about the condition of the barracks as regards lightness or darkness on the night of August 13?—A. He said it was dark.

Q. That is to say, there were no lights lit.—A. Oh, you mean in the barracks.

Q. In the barracks.—A. I don't remember whether he spoke to me on the subject or not. I think he did. But he submitted to me the day after my arrival a letter, an official letter, which he had written to the military secretary of the Department of Texas. This letter was dated August 15. This letter made a statement to that effect.

By counsel:

Now, that letter is in evidence, as I understand it, and the contents of that letter can only be proved by the letter itself, and if the witness is going into that, I would like to have him cautioned not to go into these details.

Q. Did Major Penrose make this statement to you verbally?—A. My strong impression is that he did.

By counsel:

What statement is this, please; I don't understand.

By the judge-advocate:

This statement contained in the record.

(At request of counsel third question on page 1245 [586] was read over.)

By counsel:

I still submit, may it please the court, that to my mind it is uncertain what is meant by the question, therefore I think I was perfectly within my rights to ask what was meant.

Q. Do you recall whether or not Major Penrose made any statement to you verbally as to whether there were any lights in the barracks or not on the night of August 13 after taps?—A. I am not certain, although my strong impression is that he did.

Q. That's your best recollection?—A. Yes; we had a great many conversations on different subjects concerning that affray, concerning conditions in barracks and quarters there.

Q. Were any remarks made about what effect this would have upon the time it took men to get out of the barracks?

By the counsel:

May I ask what is meant by this question?

By the judge-advocate:

This condition of darkness.

A. I know there were general discussions on that subject, although I can't remember any particular one. My impression is—well, my impression may have been gathered from what I saw myself there, I don't positively know whether the matter was discussed or not.

Q. What did you see yourself that would lead you to that impression?

By counsel for accused:

Without explanation, we object to that. We don't know what it refers to. We are entitled to know, naturally, what your questions refer to.

By the judge-advocate:

The questions are asked and I think the counsel can keep them in mind.

By the counsel:

I have your question in mind, Captain Hay, but it does not refer to any particular thing. We are entitled to know what you are trying to get at.

(Record was read from middle of page 1246 [587].)

By witness:

I would like to add to that statement. I know it was stated that the lights were poor and the night was dark and I thought myself, from the other circumstances that were related to me either by Major Penrose——

By counsel:

One moment please, Major. Are you relating something said by Major Penrose? Otherwise we shall have to object to any further reply along that line.

By witness:

I am sure Major Penrose told me there was a lot of confusion in the barracks on account of the darkness.

By counsel:

Anything that Major Penrose told you, you are sure he told you, we are perfectly willing to have go in the record.

By witness:

And from this I inferred it would take a long time to make an accurate roll call. I did not make an extended investigation on this point, because I thought it absurd for officers to make an accurate roll call in front while an enemy was thundering at the back gate. The officers all, including Major Penrose, told me that they thought on that night that the post was attacked from the outside, and they did not suspect any of their men.

Q. Explain a little more fully your closing remarks, Major, about the officers not suspecting any of their men. That is, I think Major Penrose made that statement to you. At the time you were there or at the time the rolls were called?—A. They told me what they believed on that night. I don't know what they believed afterwards. They never denied to me that their men might have committed the crime. Captain Lyon was the only officer I remember of who even told me——

By counsel for accused:

One moment, now. That is not proper evidence; we object to it. It is all entirely wrong; these witnesses are here, and they are witnesses for the prosecution. They have all been introduced, or will be introduced, and to go on and ramble along about the conversations he had with these men is entirely wrong, and is doing us an injustice.

By the witness:

I will withdraw that. I would like to state that some of the conversations I am stating have occurred in the presence of Major Penrose, maybe. I don't know whether they did or not; I think some of them did.

By counsel:

Any of the conversations the witness is sure he had in the presence of Major Penrose we are not going to object to; they are fully pertinent.

By the witness:

These things occurred six months ago.

By counsel:

Yes; we recognize that.

By witness:

I never made any notes of the conversations at all, as I did not anticipate that my general finding that the crime was committed by soldiers would ever be questioned.

By counsel:

That's entirely wrong. Any report he made at that time can be brought out by proper examination. We are perfectly willing to face anything that is proper evidence here.

By the witness:

I think, Mr. President, I have a right to explain to some extent my motives in not answering some of these questions. I was an official investigator there, and I think I have a right to some latitude. My reputation for good judgment and sincerity in making that investigation is as much a matter at issue by the course adopted by the defense as the culpability of the accused. On this one point I claim latitude as an inspector.

By the counsel:

We have no objection to the witness testifying to any legitimate facts, and we disclaim any idea of shutting out anything of that sort, but the purpose is to keep out hearsay, and his conclusions, unless specifically asked for, we have a right to object to, and we do object. That's all.

By the president of the court:

The witness understands perfectly his rights in the matter. To the objection to hearsay; and the witness also understands he has a perfect right to explain, so far as necessary, any of his testimony.

By the counsel:

We are glad to have that, may it please the court, but we want the court and the witness to understand that we don't regard Major Blocksom as on trial, or anything Major Blocksom has done or said, and we want that removed from his mind at once.

At request of court, record page 1248 [588], last answer of witness was read over.)

By counsel:

Commencing at that part "They never told me what they believed after that," is clearly irrelevant, and that's the class of evidence we want struck out.

Q. Did you examine the conditions obtaining about the barracks at Fort Brown with regard to the probability or possibility of any men getting back to the post, if they had gone out, without detection?

By the counsel:

I think we will have to object to that. He got there three or four days after this, and conditions could not have been the same at all. It appears in evidence here that the entire post was changed—the conditions in every way were changed. If he will ask if he examined these barracks and can state the condition of the barracks at this time, we are perfectly willing to have it, but we will have to object to that question in its present form.

By the judge-advocate:

In reply to the objection of counsel, I will say that counsel first admitted that this all occurred within three days before Major Blocksom's arrival. After the night of the 13th it would be impossible to have built any kind of a Chinese wall around the barracks to prevent people from getting in. The physical condition of the barracks must have been also quite the same. He has also admitted that Major Blocksom is an expert, and as an official investigator he is entitled to considerable latitude, and for these reasons I maintain the question is proper.

By the counsel:

We admit the gentleman is an expert on certain things; I don't know how many, and they are not of record. We assume that he was introduced as an expert, although there is nothing to show it. My objection is solely to that part that calls for an opinion of the witness. If he will ask questions and allow the court to form proper conclusions from it, we will not object, and we hope he will change the question so as not to make it objectionable. In its present form it calls for an opinion of the witness, and we object to it. We base this objection on two points, you understand.

(The question was read over to the court.)

The accused, his counsels, the witness, the reporter, and the judge-advocates then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce the decision. The objection is not sustained and the question will be answered.

The question was read over and amended by the judge-advocate to read as follows:

Q. Did you examine the conditions obtaining about the barracks at Fort Brown with regard to the probability or possibility of any men getting back to the post without detection if they had gone out?

By counsel:

The question is, in our minds, still objectionable for the same grounds, but I understand it has been passed on.

A. I measured certain distances the second time—may I have the question read again?

(Question was read as amended.)

A. The first time I was at Brownsville and Fort Brown—that is, in August—I estimated that if the criminals were soldiers, that from the vicinity where the first shots were fired to the corner of Twelfth street and back again to the front of the barracks was about half a mile. The second time I was there I measured the distance from the wall of the garrison next the city opposite this alley—that is, which runs to the hotel, Cowen house, etc. I found the distance from the wall to the back door of Tillman's saloon to be 267 yards, a trifle more or less. The distance from this point of the wall to the corner of Twelfth street was between 310 and 311 yards. I measured these distances with a steel tape which I obtained in the county surveyor's office. I measured the distance at the gate from the wall to the barracks. It was about 28 yards; about 30 yards including the porch. By comparing this distance, the length of the barracks, etc., I estimated that the criminals, if soldiers, would not have to go more than 750 yards from the time they fired the first shots to get to the front of their barracks, B and C. It would be somewhat longer, about 50 yards longer, to get to the front of D Company. The evidence—all that I found in the town—indicated the time of the firing to be about eight or ten minutes. That was my estimate of it from the evidence, and from what I heard in the post I think the time was about the same. If the roll calls were accurate—the conditions of darkness, want of light, etc., want of proper lights, would make accurate roll calls take a long time. The members of the court, most of them, have been company commanders and they know what an accurate roll call under such conditions would be, so I will not describe it. Even a formal roll call would take one or two minutes, as I estimate it.

The court then took a recess until 2 o'clock p. m., at which hour the members of the court, the judge-advocate, the accused, his counsel, the witness, and the reporter resumed their seats.

The witness, Maj. A. P. BLOCKSOM, Inspector-General's Department, was reminded that he was still under oath.

DIRECT EXAMINATION CONTINUED.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. I haven't your answer complete before me, Major, as you made it this morning——A. I haven't quite finished it.

Q. I wanted to see whether or not you had finished your answer?—A. I estimated that it would take an able-bodied man—a soldier—

about eight minutes to run that distance, halting long enough to fire 10 or 12 shots, and to get back to his company in line. I think the court can estimate the other probabilities in the case, and also possibilities. That is all.

Q. Did you ascertain whether or not there was more than one sentinel behind the barracks of B, C, and D upon the night of August 13?—A. There was only one that I knew of.

To this question associate counsel for accused objected, as follows:

We object to that question, may it please the court. The witness has no knowledge of it, not having been there on August 13–14, and to answer that question he must make use of something told him subsequent to that date, and therefore his answer would be hearsay, and we object to it on that ground.

Counsel for accused:

We object to it on the further ground that the prosecution has shown by its own witness the number of sentinels that were there and is bound by that answer.

To which the judge-advocate replied:

The question is withdrawn temporarily.

Q. Did Major Penrose state to you how many sentinels were posted behind the barracks of B, C, and D upon the night of August 13?—A. I don't remember that he made any special statement concerning that point, except that we talked about this one sentinel, probably, more or less—this No. 2—but I have no special recollection as to whether the number of sentinels was discussed.

Q. That is, the number of sentinels in the entire garrison?—A. No; behind the barracks.

Q. Did you, on the occasion of your visit to Fort Brown in August, make any examination as to the barracks or outbuildings, as to their external appearance with regard to marks of physical violence?—A. I made only a casual inspection myself; not enough to determine whether they had the marks of bullets on them or not, anywhere.

Q. You saw none, however?—A. I saw none.

Q. Did Major Penrose or anyone else in his presence state to you upon the occasion of your visit to Fort Brown in August anything concerning the feeling between the soldiers and the townspeople?—A. Major Penrose—well, I can't say whether the other officers spoke to me in his presence or not; so I will have to leave it out, I suppose. Major Penrose expressed resentment against the people of the town for the manner in which they had treated the soldiers.

Q. Was anything said by Major Penrose or anyone in his presence about the method employed to inspect the rifles to ascertain whether or not they were clean; and if so, when and in what manner were these rifles inspected?—A. Major Penrose only told me that the rifles were inspected at daylight the next morning. As I then considered it too late to find out anything about them I made no further——

To this answer the associate counsel for accused objected as follows:

I object to the answer. May it please the court, we contend that the witness is entitled to a full answer to a specific question, but so far as that answer bears on the question and attempts to explain it and so far as it is relevant to this issue, that is all right; but we object to any statement contained in his answer which has no bearing on the issue and is immaterial, no matter whether it is an explanation tending to define his position or to defend that position. The

witness is not on trial, and any matter of that kind is purely irrelevant, and we will continue to object to any answer of the witness when he goes beyond the limits of the question.

The judge-advocate:

Does the witness insist upon the continuation of his answer?

A. No.

The judge-advocate:

The prosecution will not so insist.

Q. Did Major Penrose or anyone else in his presence make any report to you about the so-called Tate-Newton affair?—A. Major Penrose and I had conversations on the subject of the Tate-Newton affair.

Q. Do you remember the substance of these conversations?—A. Well, I don't know in what manner they differed from the written papers which I submitted in my report of the affair——

Counsel for accused:

I would like to ask a question right there. Have you submitted a written report to anyone covering this entire matter?

A. Yes, sir.

Q. The result of your investigation?—A. I have.

Q. Where is that report?—A. It is at Washington, I suppose.

Q. When was it made?—A. It was made on the 29th of August, I believe.

Counsel for the accused:

Now, may it please the court, I think we have a right to object to this witness attempting to vary in any way his written report made at that time. We won't object, may it please the court, to that being submitted and to this witness making any variation in that that the judge-advocate sees fit; but as long as this has been reduced to writing and has been submitted, that is the best evidence of the contents of that report, and it clearly indicates that this was included in that report. It is absolutely unfair to us, and we want to state now we haven't the slightest objection to Major Blocksom or any other witness, as an inspector, making a report, but we do object to this. It is unfair and unjust to the accused, in our opinion. If that report was submitted, it is clearly within the province of this judge-advocate and within his power to get it, and we make no objection to it being introduced as an official report, but we do object to it being brought in by parole evidence. We go on record as saying that that is what he ascertained at that time, and here it is six months after that time, and to vary it in that way is certainly not fair, and we ask a ruling of the court on that point.

The judge-advocate:

I have nothing to say.

Member of the court:

Before the court is closed, I would like to ask whether the judge-advocate has a copy of that report?

The witness:

Mr. President, I should like to say that I have no objection in the world to my report being submitted to the court. I don't know whether it is authenticated or not, in the judge-advocate's possession.

Counsel for the accused:

I simply wish to say that while we have no objection to the introduction of that, we reserve the right to object to anything that is hearsay in that report. Our objection is now that they are trying to vary the substance of an official report by hearsay evidence.

The judge-advocate:

I certainly am not trying to make him vary his report in any way. I have here in my hand now an authenticated copy which contains the report of Major Blocksom and allow me to read——

Counsel for the accused:

We object to that form. If you want to submit it then we will look at it and you can submit it to him for identification. What suggested this objection to me was that the witness said it was included in his report.

The witness:

It seems to me, Mr. President, that my report is the best evidence of what I thought at the time and heard at the time. As I stated to the court this morning, I do not have a distinct recollection of a good many things that occurred during my first investigation six months ago. I took no notes, as I said. I can give my general impressions of what Major Penrose told me about this Tate-Newton affair.

The presiding officer:

Does the judge-advocate desire to have that introduced?

The judge-advocate:

I would like to read that report, but as long as counsel asks a ruling of the court I certainly have no objection to a ruling of the court.

The presiding officer:

You have no objection to that being introduced?

Counsel for the accused:

I would like to examine it, sir; we have that right.

Q. You spoke just now, Major, of an official report. Did you refer to a report under date of August 29, 1906?—A. I think so. It was directed to the military secretary Southwestern Division. I think it was August 29. That is the only one I made on that date.

The judge-advocate:

I have here a report purporting to be from Maj. A. P. Blocksom, under date of August 29, to the military secretary, Southwestern Division, through headquarters Department of Texas. This is contained in a volume which is stamped with the official seal of The Military Secretary's Office of the War Department, and as such it becomes competent evidence to the same extent as the original of this report would be.

Counsel for the accused:

I would like to ask the judge-advocate, to have as a matter of record, whether he has made application for the original document itself from the War Department?

The judge-advocate:

I will state for the information of the court that I have not asked for this especial document, but I have asked for other documents bearing on this matter and have been notified that it is impossible for me to have these documents, and calling my attention to the footnote on page 44 of the Court-Martial Manual, which was read before the court this morning.

Counsel for the accused. (Here interrogates the judge-advocate:)

Did you ask for these documents to be certified in the usual form for use as evidence before the court-martial?

A. Do I understand that I am being subjected to a cross-examination?

Q. The understanding is that we want to know what you have done in order to secure the proper evidence—first-hand evidence.

A. I have just stated what I have done to the court. For the information of the court I am making the explanation. If the court desires the information the court can ask for it.

Counsel for the accused:

May it please the court, I request that my question be answered, because it is on that that I wish to see whether he has used all means to procure the original or a certified copy of the original. I think we are entitled to know that. I am making no special point about it.

The judge-advocate:

Does the court desire an answer to that question?

Counsel for the accused:

We simply want to know what he did.

The judge-advocate:

I have stated what I have done; I have requested from The Military Secretary's office a copy of a letter to be introduced here in evidence and was informed that that was not the common practice, and had my attention directed to a footnote on page 44 of the Court-Martial Manual, which I read this morning, and as it was futile to get the letter in question, I made no attempt to get the others.

Counsel for the accused:

You didn't ask for certified copies, then?

The judge-advocate:

I asked for the originals. I will now read a report purporting to be made by you (Major Blocksom), page 42——

Counsel for the accused:

Wait a moment. Has he identified it as being his report?

The judge-advocate:

He said that he made one report only on August 29; that is the date of this report.

Q. (Judge-advocate reads report:)

BROWNSVILLE, TEX., *August 29, 1906.*

SIR: I have the honor to report investigation of trouble caused by soldiers of Twenty-fifth Infantry, midnight August 13. I arrived at Brownsville the night of August 18.

Appended are copies of telegram and letters of Major Penrose, marked A to D; telegrams sent by me, A′ to F′; affidavits of noncommissioned officers in charge of quarters, etc., A″ to F″; testimony taken by Citizens' Committee, etc., A‴ to B‴. They present a fair account of the occurrence.

I examined privately the five officers present when trouble occurred (Major Penrose, Captains Lyon and Macklin, Lieutenants Grier and Lawrason, all of Twenty-fifth Infantry), all men who made affidavits, etc., A″ to F″ (as well as post noncommissioned staff, a number of old noncommissioned officers in each company, etc.), all important witnesses in A‴ to D‴, Mayor Combe, Mr. Dominguez, Mr. and Mrs. Evans, etc. I interviewed nearly all prominent officials, Federal, State, and county; saloon keepers and other citizens of all classes. I examined the houses, interviewing inmates, of Messrs. Cowen, Rendall, Starck, and Yturria, observing where shots entered and left; also saloon where bartender was killed, and a number of other buildings having bullet marks.

The committee invited by Major Penrose to investigate (referred to in D′) practically delegated its authority to Captain McDonald, of State Rangers, who is also a detective. He was given every assistance by the commanding officer. He served the warrants the first time.

CAUSES.

1. The soldiers heard they were not to go to Camp Mabry because Texas troops had threatened to use ball cartridges against them in maneuvers. They knew Colonel Hoyt made a request that the Twenty-fifth be not sent to Texas.

2. The people did not desire the colored troops, and thought they should not be sent here. I learned this *before* ("before" is in italics) the rumored abandonment of Brown from prominent citizens, members of the committee of safety, etc. I think requests were sent to Senators, Congressmen, etc., to use their influence in the matter, but am not positive. If a fact, it is probably known at the War Department.

3. Soldiers of the Twenty-fifth were not allowed to drink with white people at the principal bars in town, though in some cases saloon keepers put up a separate bar for their use, this having an opposite effect to that intended. The bartender was killed in such a saloon.

4. Tate-Newton, Baker-Reid cases, etc. (See B and B'''.) Tate-Newton case was that of a party of ladies standing on street sidewalk; claimed that two colored soldiers rudely jostled them. Mr. Tate, inspector of customs, husband of one of the ladies, knocked down one of the soldiers with his revolver. The ladies were obstructing the sidewalk, although anybody could have easily gotten by them. The soldier was rude and probably insulting in his manner. Tate's remedy was too drastic. It was "in the manner of the South." He told me he would have used it against any man—white or black. Mr. Vann, collector of customs, invited Major Penrose to assist at an investigation of this case, but latter had no time after the 13th. Reid and another colored soldier were at ferry landing, having returned from Matamoros. Mr. Baker, inspector of customs, claimed they were drunk and disorderly (confirmed by an unprejudiced witness); that he told them to move on, and finally pushed one, who fell off plank walk into mud and water about knee-deep, more through his condition than strength of the push. Baker probably used more force than he acknowledged. Facts in these two cases were exaggerated on both sides and increased the bitter feeling between soldiers and citizens. I heard of several cases of threats from both sides before the 13th, but believe them manufactured.

5. Case of Mrs. Evans (see B). There is no doubt she was seized by the hair and thrown violently to the ground by a tall negro soldier, who then ran away through fear of people close by. This incident, occurring on the 12th, inflamed and infuriated the people very much. The canceling of passes, sending out patrols, etc., probably increased the resentment of the soldiers against people of Brownsville.

THE RAID INTO TOWN.

From the evidence obtainable, I believe the first shots were fired between B Company barracks and the wall separating post from town. A number were fired into the air for the purpose of creating an alarm. The soldiers—9 to 15, possibly more—then jumped the wall and started through town. There is no reliable evidence to support the claim that the first shots came from town, and no bullet marks were found on barracks. From their direction, etc., I am sure three shots through Mr. Yturria's house came from a point near the center of B Company's upper back porch. A Mexican boy sleeping on the floor of the Yturria porch said they were among the first fired.

Mr. Rendall lives over the telegraph office, opposite post gate. A bullet went through his sitting room; it came from a point near the wall, opposite southwestern end of C Company barracks——

The witness:

By the way, I would like to explain that, while it is C Company. I made a mistake there; it should have been D Company. That is, I made the mistake myself; I got D and C Company mixed up.

(Judge-advocate continues reading report.)

Some of the first shots fired also came from the vicinity of D Company barracks.

The witness:

That should be C Company barracks, although my report is as read.

(The judge-advocate continues reading.)

The line of barracks of D, B, and C Companies runs northeast to southwest.

The witness:

That is another mistake I made. It should be C, B, and D.

(The judge-advocate continues reading report.)

The wall between post and town is parallel to and about 75 feet northwest of line of barracks. An alley through town, perpendicular to wall, beginning at a point nearly opposite space between B and D Company barracks, was the line of operation (about three blocks in length).

The raiders first struck Cowen's house (at end of first block). There were two women and five children in it. It is a miracle some of them were not shot. The raiders could not help knowing they had not yet gone to bed. About ten shots were fired, nearly going through house at a height of 4½ feet or less above floor. One shot put out the lamp sitting on a table. Mrs. Cowen has been on the verge of hysterics ever since. It is said the Cowen children had made fun of "the nigger soldiers," but I could not pin down the reports. There must be some truth in them. The lieutenant of police, Dominguez, heard the firing and rode toward it, accompanied by two policemen. Near corner of Miller Hotel (end of second block) the two policemen turned back, but Dominguez kept on, and the raiders started firing upon him. He said there were about 15 colored soldiers in the party. He was mounted on a white horse and went half a block after reaching corner of hotel, when his horse fell dead, shot through the body several times. The raiders were probably at the corner, and continued firing on the fleeing man until horse fell. Dominguez was shot in right arm (afterwards amputated below the elbow). He did not even draw his revolver from holster. A number of shots were also fired at the other two policemen. Dominguez, many years on the police force, is universally respected. The raiders fired seven or eight times into the Miller Hotel, including several shots at a guest sitting by a window. After shooting Dominguez they divided. One party proceeded along the alley. Frank Natus, bartender in Tillman's saloon (about two-thirds the way down third block), heard them coming and started to close the back door, but was shot and probably instantly killed about 20 feet from door. A Mexican in the saloon, Preciado by name, was slightly wounded in the hand by a bullet which passed through his coat. Natus had never had any trouble with the soldiers, as far as known. Five or six shots were fired through that back door. This party tried to get into the back door of another saloon, but it was closed.

The other party went half a block to the right, then turned to the left, and fired five or six shots into Mr. Starck's house (second from corner on street parallel to alley), evidently mistaking it for Tate's (which is third). Bullet marks in Starck's house are higher than in Cowen's. Mrs. Starck said two shots went through mosquito bar over bed in which she and two children were sleeping. These were the last attacks, and raiders then probably ran back. Bullet marks were found on several other houses in vicinity of those already mentioned.

None of the individual raiders was recognized. Streets are poorly lighted, and it was a dark night. Those who saw them were busy trying to keep out of sight themselves. The soldiers were comparative strangers in town, having arrived only two weeks before. That the raiders were soldiers of the Twenty-fifth Infantry can not be doubted. The evidence of many witnesses of all classes is conclusive. Shattered bullets, shells, and clips found are merely corroborative.

RESPONSIBILITY BEFORE AND DURING THE FACT.

I do not think the commanding and other officers and some of the senior non-commissioned officers can be blamed for not discovering the preconcerted ("preconcerted" is in italics) raid. It is easy to say, in the light of later events, that the guard should have been doubled and other precautions taken the night of the 13th, but who could imagine that American soldiers in a body would try to murder unoffending women and innocent children?

The commanding officer did cancel passes and send out patrols early in the evening, as much to allay the anger of town people as to prevent men from committing other excesses. It may be interesting to note here that troops were paid on the 11th.

All the officers firmly believed (most of them till morning) the garrison was attacked from the town side as a result of the assault on Mrs. Evans, the general ill feeling of town people, etc., and this delusion was heightened by the call to arms, sounded by order of the sergeant of the guard (probably too early during the firing to be genuine). As a consequence, the raiders were not

suspected by their officers and had an easy time getting back; while arm racks were opened with difficulty in the dark, preparations made for defense, etc., cleaning the rifle requires a few minutes only.

Major Penrose is indefinite in his statement as to time command was paraded (see A). It was at least ten minutes after first shots were fired; probably longer. Captain Macklin, officer of the day, says he went to bed between twenty and ten minutes to midnight, very much fatigued, and slept through all the uproar until about 1 a. m. The first shots were fired a few minutes before midnight. It is singular the members of the guard sent to wake him up could not find him, although, as far as he is concerned, I found no reason to doubt his statement.

RESPONSIBILITY AFTER THE FACT.

I think Major Penrose, as soon as he believed the criminals were soldiers, should have arrested and placed in solitary confinement Sergeant Jackson, B Company (senior sergeant present in company, as well as in charge of quarters); Sergeant Reid, B Company (sergeant of the guard); Private Howard, D Company (sentinel around barracks), and Scavenger Tamayo (at B Company water-closet, next the wall, when firing began). It is very probable that proper effort would have induced one or more of these men to tell what he knew. The soldiers are among those arrested, but not the scavenger, although I recommended him to the district attorney.

Major Penrose has conducted himself in a manly way under trying circumstances, although subjected to much undeserved abuse. Almost the only criticism against him is that above. The officers appeared to be trying to find the criminals, but it is certainly unfortunate for the reputation of the battalion that they have as yet hardly discovered a single clue to such a terrible preconcerted crime committed by so many men. I believe the battalion had an excellent reputation up to the 13th of August, but the stain now upon it is the worst I have ever seen in the Army. Many of its old soldiers who had nothing to do with the raid must know something tangible as to identity of the criminals. If they do not disclose their knowledge they should be made to suffer with others more guilty as far as the law will permit.

RECOMMENDATION.

If satisfactory evidence concerning identity of the criminals does not come from members of the battalion before a certain date, to be fixed by the War Department, I recommend that all enlisted men of the three companies present on the night of August 13 be discharged the service and debarred from reenlistment in the Army, Navy, or Marine Corps.

LATER EVENTS.

The following men were arrested by the civil authorities on the 23d and placed in guardhouse for safekeeping:

Sergeant Jackson, B Company, Twenty-fifth Infantry, in charge of quarters; Sergeant Brawner, C Company, Twenty-fifth Infantry, in charge of quarters; Sergeant Reid, B Company, Twenty-fifth Infantry, sergeant of the guard; Corporal Powell, D Company, Twenty-fifth Infantry, in charge of quarters; Corporal Miller, C Company, Twenty-fifth Infantry, on pass; Corporal Madison, C Company, Twenty-fifth Infantry, on pass; Private Howard, D Company, Twenty-fifth Infantry, sentinel on No. 2; Private Newton, C Company, Twenty-fifth Infantry, knocked down by Mr. Tate; Private Reid, C Company, Twenty-fifth Infantry, pushed into mud and water by Mr. Baker; Private Gill, D Company, Twenty-fifth Infantry, with Reid when pushed by Baker; Private Askew, C Company, Twenty-fifth Infantry, cap found in town, alleged to be his; Private Hollowman, B Company, Twenty-fifth Infantry, part owner of saloon in Tenderloin.

An ex-soldier named Allison, partner with Hollowman, was also arrested on the 22d and placed in guardhouse for safekeeping. He is still there.

The noncommissioned officers in charge of quarters were responsible for gun racks, and had keys thereto in their personal possession. It will be seen by examining the note after each name that these men were arrested chiefly on suspicion. I believe the majority of them are guilty on one or more counts, but there is little prospect of conviction on evidence thus far obtained.

The order to take rail for Fort Reno was suspended on morning of the 24th, and in the afternoon orders were received for the battalion to go by way of San Antonio and to take military prisoners along to be turned over to commanding officer, Fort Sam Houston, for safekeeping until brought before a grand jury. Captain McDonald late that afternoon demanded the prisoners. Major Penrose, who had just informed Judge Welch of his latest orders, sent McDonald a letter declining to give them up (see D). McDonald would not acknowledge the authority, and Judge Welch finally withdrew the warrants to avoid bloodshed. I believe he threatened McDonald with arrest for contempt before the latter gave them up. It is possible McDonald might have fought the entire battalion with his four or five rangers were their obedience as blind as his obstinacy. It is said here he is so brave he would not hesitate to "charge hell with one bucket of water." The warrants were then served by Sheriff Garza. On being informed of the latest orders he gave up the struggle.

The battalion left Brownsville with the military prisoners at 6.30 a. m., August 25.

I met many sterling people in Brownsville. The majority of good business men recognize the proper ethics of the situation, but many others of a somewhat lower class think the colored soldiers should be treated like the negro laborer of the South. It must be confessed the colored soldier is much more aggressive in his attitude on the social-equality question than he used to be.

Very respectfully,

A. P. BLOCKSOM,
Major, Inspector-General.

The MILITARY SECRETARY,
Southwestern Division.
(Through headquarters Department of Texas.)

Counsel for the accused:

Are there not some indorsements on that communication, forming a part of it?

The judge-advocate:

I think there are (judge-advocate reads first and second indorsement on above report, as follows):

[First indorsement.]

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, September 1, 1906.

Respectfully forwarded to the military secretary, Southwestern Division.

WM. S. MCCASKEY,
Brigadier-General, Commanding.

[Second indorsement.]

HEADQUARTERS SOUTHWESTERN DIVISION,
Oklahoma City, Okla., September 4, 1906.

Respectfully forwarded to The Military Secretary, War Department, Washington, D. C.

To-day I personally interviewed Major Penrose, commanding Fort Reno, where his battalion is now stationed, and he reports that the orders of the War Department with reference to holding his men under strict surveillance are rigidly enforced, and as yet no disclosures have resulted. As soon as any information is obtained it will be reported.

The attention of the War Department is invited to the names of the men for whom warrants were issued and who are now in confinement at Fort Sam Houston.

It is noted that most of these men were on duty as members of the guard or in charge of barracks at Fort Brown during the hours of the disturbance. The reasons for the selecting of these men or the manner by which their names were procured is a mystery. As far as known, there is no evidence that the majority of them were in any way directly connected with the affair. It seems to have been a dragnet proceeding.

WM. S. MCCASKEY,
Brigadier-General, United States Army, Commanding.

The judge-advocate:

There are a number of exhibits if the counsel desires those read also.

Counsel for the accused:

No, we don't want them.

The judge-advocate:

Or does the court desire them read?

The presiding officer:

I think not.

Q. That is the report as rendered by you?—A. As far as I recollect, that is exactly the wording of my report.

Q. Do you know of your own knowledge what kind of uniforms the police of Brownsville habitually wear?—A. At the time I was in Brownsville, in August, they wore a uniform which it seemed to me was linen, of a little different color from khaki; it was more like the linen which people ordinarily wear in summer time. It was not so yellow as khaki.

Q. How else was it distinguished from the uniform of the soldiers, if you remember—distinguishable?—A. I think their hats were something like the hats worn by soldiers, but they didn't have any leggings, and as far as their general appearance, they didn't look like soldiers; they didn't wear their clothes like soldiers; they were looser, not so near. The men themselves were smaller than the average soldier, didn't have anything at all the bearing of a soldier.

Q. Are you familiar with the uniform, if any, as worn by the so-called Texas Rangers?—A. I saw three or four Texas Rangers—whether they all wore uniforms or not, I have forgotten; one or two of them did, certainly. Their uniforms likewise struck me as being different in color from the khaki used by the soldiers. Of course, their clothes fit them better, they were larger men, and better set up than the Mexicans.

Q. What color were these men?—A. White.

Q. Were they Mexicans?—A. They were Americans—the Rangers were Americans. I have forgotten whether they wore leggings or not, but if they did they were not like the soldiers' leggings, at least they didn't impress me as being the same, and they didn't look like soldiers.

Q. How many Texas Rangers did you see in Brownsville during the time you were there, to know them as such?—A. I saw not more than five or six altogether.

Q. Have you any knowledge as to whether or not these rangers are habitually in Brownsville?—A. I only know what I heard there.

Counsel for the accused:

We don't want any hearsay.

Q. Did you acquire this knowledge as a result of official investigation?—A. I did.

Counsel for the accused:

We object to that; there are plenty of methods of bringing that in. We object to any hearsay evidence.

Q. Did Major Penrose, or anyone in his presence, state to you the cause of a broken rifle rack in C Company barracks?—A. My very

strong impression is that Major Penrose told me he had made a careful examination himself of all the buildings—of all the barracks—and outbuildings, and could find no traces of any bullet marks.

Counsel for the accused:

The witness clearly misunderstands the question.

The judge-advocate (to reporter):

Will you kindly read the question?

"Q. Did Major Penrose, or anyone in his presence, state to you the cause of a broken rifle rack in C Company barracks?"—A. I was thinking of bullet marks. I think Major Penrose told me that he had given an order to the men of C Company to get their rifles if they had to break open the racks. I am of the impression that Mr. Grier told me.

Counsel for the accused:

That is hearsay.

A. In the presence of Major Penrose, that Major Penrose had given this order, but I am not positive of that, either; the time was so long ago, but I think Mr. Grier can clear that up himself.

Q. Did you have occasion to take down officially any statements made by certain witnesses who were supposed to have had knowledge concerning the shooting on the night of August 13?—A. You mean take the statements down myself?

Q. No; was it taken down in your presence; in other words, was an official investigation made by you of certain witnesses who were supposed to have knowledge of the shooting?—A. There was such an investigation made in December.

Q. I would like to ask the circumstances under which that investigation was made; in other words, did all these witnesses know about the affair supposed to be taken or only the part pertinent to the shooting on August 13?

Counsel for the accused:

May I ask what investigation is referred to?

The judge-advocate:

I think the Major said it was in December.

Counsel for the accused:

He said September, as I understood him.

A. I said December. The investigation was intended to cover primarily and principally the question as to who committed the crime on the night of the 13th of August, and witnesses were not, as I remember, asked any question outside of any facts referring to the identity of the persons who committed the crime.

(At request of counsel, reporter reads last answer.)

A. That is, to their identity as civilians or soldiers.

Q. Can you state from your experience as an inspector whether or not it is customary for soldiers to have in their personal possession more cartridges than the number for which they are accountable?

To this question counsel for the accused objected, as follows:

We object to that; it is clearly irrelevant and immaterial what some other regiment does. Anything that goes to show what the regiment in question does

might be relevant, but as to what some other regiment does we all know that it is no criterion as to what this regiment does. Any question bearing on this case is all right, and we have no objection to going into it.

To which the judge-advocate replied:

It is a matter of common knowledge to military men that soldiers as they go are more or less alike throughout the entire Army, be they white or colored. Major Blocksom's experience as an inspector will doubtless furnish a criterion of the conditions existing in the Tenth Infantry or Twenty-fifth Infantry or Seventh Cavalry.

Counsel for the accused:

I am perfectly willing for him to go into the Twenty-fifth Infantry; it is the only regiment whose customs are under investigation, but to show what is done in Alaska or the Philippines has no bearing on this subject whatever, unless the regiment in question is brought into bearing in the case.

The accused, his counsel, the witness, the reporter, and the judge-advocates then withdrew, and the court was closed; and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce the decision that the objection is sustained. The question will not be answered.

The judge-advocate:

These articles (referring to cartridges), may it please the court, are already in evidence; they have already been marked.

Q. Will you kindly take those, Major, and tell the court what each is? I think you will find that they have all been marked on the side in some manner or other.—A. Mr. President, I don't claim to be an expert. It is true that counsel for the defense made this claim for me this morning, and afterwards withdrew the accusation in a very graceful manner. But I know the difference between the Krag and the Springfield. That, I think, is a Springfield with a reduced charge, but I don't know.

Q. Is it marked in any manner?—A. I don't see any, except some scratches.

Q. That is what I refer to. How many are there?—A. There are two sets of scratches running along the shell. That is a Springfield rifle clip. That is the Springfield rifle bullet—there are two of them.

Q. By "bullet" you mean what?—A. I mean the Springfield rifle cartridge, and this also is the cartridge of the Springfield rifle, reduced charge. These are marked—one of these is marked longitudinally with scratches.

Q. How many?—A. There seems to be two sets of them, rather close together, about a quarter of an inch apart—no; there seems to be three of them. On this bullet, or this cartridge, the marks—the scratches, rather—are parallel to the base; they are very short. That is a Krag bullet.

Q. You mean cartridge?—A. Cartridge; yes. I can't see that there are any marks on it. The difference between the Springfield rifle bullet and the Krag bullet is principally in the shape of the nose. The Krag bullet is blunter; and also in the Krag bullet there is a slight corrugation near the end of the shell. I think a lubricant is put in that inside the shell. I think there are two of these reduced-charge Springfield bullets; there are two of the Krag bullets. I don't know what that is, unless it is used for target practice at short distance. I think there is such a bullet, but I don't know whether this is one of them or not.

Q. And the rifle using that last cartridge you laid down, do you know what rifle used that that you described as a target bullet?—A. I think the Springfield rifle uses it.

Q. Did I understand you to say this morning that you had found no shells in Brownsville?—A. No; I didn't find any.

Q. Were any turned over to you officially, as a result of your investigation?—A. Quite a number of them.

Q. Did they resemble any of those there?—A. They all resembled these shells here, and there were three bullets turned over during that investigation, I picked one of them myself out of the door, as I said this morning. They were exactly like these bullets here.

Q. And those you have described as Springfield cartridges?—A. Yes; Springfield bullet, and the shells are the same as Springfield shells.

Q. Now, you stated this morning that you made, I think, on the occasion of your visit to Brownsville in August, a visit to the house of one Mr. Fred Starck?—A. Yes.

Q. Do you remember the appearance of that house?—A. It was a frame house, with the cone of the roof, I think, running parallel to the street.

Q. Do you know who lived next door to Mr. Starck, on either side?—A. Mr. Tate, I was told, lived in the house next to Mr. Starck, verified after.

Q. Do you remember the appearance of that house?—A. I do not.

Q. Do you remember the appearance of the fence or wall in front of the Starck house as compared with that in front of the Tate house?—A. I don't remember that there was any difference, although there might have been.

Q. Was there any marked difference in the appearance of these two houses in their general appearance?—A. Not that I remember of. I don't know whether I remember that from looking at the houses themselves, but I think there were several houses right along there that looked very much the same.

Q. During the occasion of your visit in August to Fort Brown, will you state whether the commanding officer, Major Penrose, or any other officer in his presence, told you of any precaution taken to prevent disturbances or outbreaks of August 13, other than the canceling of passes and sending patrols into town the early part of the night?—A. He told me of no other precautions.

Q. Do you remember whether he told you that he had not taken any other precautions?—A. I do not.

Q. In other words, is your recollection negative?—A. My recollection is negative.

CROSS-EXAMINATION.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Counsel for the accused:

I would like for the court to take a recess for a few minutes. I would like to get some of these things straightened out.

The court then took a recess until 3.30 o'clock p. m.; at which hour the members of the court, the judge-advocates, the accused, his counsel, the witness, and the reporter resumed their seats.

Q. You made, you stated, two separate and distinct investigations of the alleged shooting at Brownsville?—A. Yes.

Q. And the first one was made when?—A. Between the night of the 18th of August and the morning of September 4; the second between——

Q. Let's take up the first one first. What information did you have in regard to the events before you commenced your investigation, if you recall?—A. I don't think I had any, except what I read in the newspapers, probably on the 16th, 17th, and 18th.

Q. What I am trying to get at is what official information was given you as a basis for the investigation, if any?—A. I was given a letter from the secretary of the Southwestern Military Division.

Q. Were there any allegations set forth in that at all that you recall?—A. I don't think there was, though I am not positive of it. All I remember is that I was instructed to go down there and investigate the circumstances attending the shooting in town that night.

Q. Were you given written instruction covering the point?—A. I was.

Q. Have you those with you?—A. No, sir.

Q. What became of them?—A. I turned them in with my pay account to draw mileage.

Q. Was it in the form of a special or general order, or what form?—A. It was in the form of a letter.

Q. Isn't that available in any way; couldn't you get it for us?—A. I can easily get a copy of it from the military secretary of the Southwestern Division. I will telegraph for it.

Q. Thank you. You don't recall of any allegations being made against the soldiers or against anyone?—A. Against the soldiers?

Q. In connection with that affair?—A. I heard a great many people in Brownsville——

Q. I am trying to get at the official attitude with which you went down there; what were your instructions?—A. The letter of instructions was very short, and I don't believe it made any allegations as to who were even supposed to have committed this crime.

Q. But you are not sure about that?—A. I am not sure of it, and I don't know; I didn't hear anything else officially that I know of.

Q. Do you know upon what that was based—your order—did it originate with the division commander?—A. It originated with the division commander.

Q. That first inspection?—A. That first inspection. He wasn't at Oklahoma City at the time; he was, I think, making an inspection at Fort Sill; he telegraphed up to the military secretary to send me down there.

Q. You will get a copy of that letter for us, will you?—A. Yes; I will get a copy of it.

Q. And this report you made on August 29 was the result of your investigation pursuant to those instructions at that time?—A. Yes.

Q. Your next inspection was made when?—A. Was made in December; between the 26th of December and the 2d of January.

Q. January of this year?—A. Of this year.

Q. What were your instructions at that time?—A. My instructions at that time were——

Q. Have you a printed copy of those?—A. No; I have not. They were given me by the Secretary of War, and the instructions were marked "confidential;" but the Secretary of War told me personally before I started that the investigation was to be made in a spirit of fairness and justice; that it was not to be assumed that the soldiers committed the crime, but that we were to try to find out the real facts in the case, whether they were for or against the facts as I found in my report. That was the general feature of the letter of instructions.

Q. Do you know what brought this about, of your own knowledge, this second inspection?—A. I do not, of my own knowledge.

Q. Isn't it a matter of fact that your report was a subject of severe criticism—that is, in so far as your conclusions about the guilt of the men; that is, your first report I mean; wasn't that subject to criticism?—A. It was a subject of criticism in newspapers and in the United States Senate.

Q. General criticism throughout the country, was it not?—A. I think it was general in New England, as far as the press was concerned.

Q. It was general over the country, wasn't it?—A. Well, it was, in a measure, general, too, but it wasn't altogether unfriendly. In the entire South the criticism was friendly, and in some parts of the North.

Q. The criticism of whom was friendly?—A. The criticism of me and my report.

Q. Wasn't it, as a matter of fact, to get further and more complete evidence as to who really did commit this crime?—A. No; I didn't understand it so. While it may have included that, yet it wasn't made especially for that purpose. I understood it was made especially for the purpose of getting sworn evidence of the real facts in the case.

Q. Further than that you know of no reason why the second investigation was made?—A. Not of my own knowledge, I do not.

Q. Well, you made every effort to support your first conclusions—every legitimate effort, I mean?—A. Of course I naturally desired that they should be supported. At the same time, I had very little to do with the investigation myself.

Q. As a matter of fact, Mr. Purdy was your associate, and he made the investigation?—A. He made the investigation of all the witnesses and took the depositions of all the witnesses except two, which I took myself, because he went away on the 1st day of January. He wanted to go to San Antonio for some purpose—I have forgotten what it was now—before I thought the investigation was complete.

Q. At Brownsville, you mean?—A. Yes; I wanted these other two witnesses, whose depositions I took.

Q. Do you remember who they were?—A. They were Mr. Moore, the proprietor of the Miller Hotel, and Mr. Ignacio Garza.

Q. Was he the sheriff down there?—A. No; this was a different man. This Ignacio Garza was an employee of Mr. Francisco Yturria.

Q. And he is the man that lived on the corner, near the Cowen residence?—A. Yes, sir; opposite the Cowen residence.

Q. The same man that testified in this case?—A. Yes, sir. I took his evidence on the 2d day of January—no, on the 1st day of January; I left on the 2d.

Q. You swore all these witnesses, did you not?—A. I did.

Q. And how was that evidence taken down—by a stenographer?—A. Taken down by a stenographer, and afterwards sworn to again by the clerk of the court, Mr. Kowalski.

Q. It was all read over by the witnesses?—A. All read over to the witnesses by Mr. Kowalski. I can't state that to my own knowledge, because quite a number of them were certified to by him in my presence.

Q. That was your intent—that was the practice?—A. Yes.

Q. Isn't it a fact that this second examination was brought about in order to support your first conclusions, which were not supported by evidence in extenso and produced by criticism of the action by the powers that be?—A. I have no doubt that this second investigation was ordered on account of criticism, but, as I said before, I had specific and strong instructions to try to bring out all the facts in the case, whether they were for or against my previous theory and report. I don't think I am violating the confidence in stating that those were the instructions of the President himself, as I understood them to be.

Q. But your instructions are confidential, are they not?—A. They were confidential, but I have really given the main portions of them, at least what I considered the essential part of them, to you.

Q. These witnesses that you examined were not cross-examined by anyone representing either side, were they?—A. They were not.

Q. They were taken what we call "ex parte?"—A. They were taken ex parte, if you consider Mr. Purdy as an ex parte examiner. I don't know what his predilections were before the investigation was made; I never met him before until on the train going to St. Louis.

Q. Who was he?—A. He was the assistant to the Attorney-General of the United States.

Q. And employed in the Attorney-General's office at Washington?—A. Yes, sir; and employed in the Attorney-General's office.

Q. That report was submitted by you to the War Department, was it not?—A. You mean that report of August 29?

Q. The last one that was submitted.—A. To the War Department.

Q. That went direct—it didn't go through any channels?—A. It was directed to The Military Secretary, United States Army, and was sent by me—that is, the letter of transmittal was.

Q. Did you reduce to writing the evidence of the men you stated you examined in your report of the 29th of August, 1906?—A. Yes; it was reduced to typewriting.

Q. The report of August 29?—A. The stenographers typewrote the evidence, and it was then read over to the witnesses and sworn to.

Q. Now, aren't you talking about the last report?—A. Yes.

Q. I had reference to August 29.—A. I didn't reduce to writing any of them. Those that I submitted with my report was written up by the people.

Q. Now, coming back to the Purdy report for just a moment: Wasn't there some additional reports, and incorporated in that over and above the evidence that you and Mr. Purdy took?—A. Yes; I think there was. There were several affidavits put in there that Mr. Purdy and I didn't take.

Q. Have you seen that report at all, Major?—A. Yes, sir.

Q. As a matter of fact, isn't there some information in that with regard to the ammunition as it is manufactured and how it is manufactured? Wasn't that made a subject of special investigation?—A. Yes, sir; it was, but I am not certain whether it was put in that Purdy report or not; it was put in one of those printed reports.

Counsel for the accused (to judge-advocate):

You have no objection to his seeing that report?

A. (The witness.) Let me see that; I don't remember which one it is in.

(Judge-advocate hands witness the Purdy report.)

A. Yes, sir; there is quite a lot of matter in here which doesn't belong to the Purdy report.

Q. Although incorporated in what is called the Purdy report?—A. Yes.

Q. Now that you have examined that, doesn't that report contain the result of various investigations of the manufacturers of these various arms and ammunition throughout the country?—A. Yes, sir.

Q. That is, it shows how many of the present issue of rifles—that is to say, the new Springfield, not necessarily the present issue—doesn't that show how many had been manufactured throughout the country?—A. It does.

Q. And the ammunition, where it had been manufactured and the amount that had been sent out by the various firms?—A. I think it does.

Q. And what guns had been manufactured carrying the new Springfield cartridge?—A. What was that last question?

Q. The various guns that had been manufactured and the ammunition they carried?—A. I don't see any reference to the manufacture of them.

Q. Do you know Captain Rice, of the Ordnance Department?—A. Yes, sir.

Q. His report is incorporated in that?—A. Yes; he was investigated or his deposition was taken by Mr. Purdy.

Q. That is a part of the Purdy report?—A. Yes; that is a part of the report; I think he did refer to that subject.

Q. Well, were you not examined yourself in connection with this matter by some one?—A. Yes; my affidavit was taken by Mr. Purdy.

Q. By Mr. Purdy?—A. Yes; that was after we returned to Washington.

Q. Was that made a part of that report also?—A. That is a part of the report.

Q. Was that taken under oath?—A. It was.

Q. Where is your evidence there, do you remember?—A. It is on page 162.

Q. Will you examine it?—A. (Witness turns to his affidavit on page 162 of the Purdy report.)

Q. Is that the one that you refer to?—A. Yes, sir.

Q. Isn't there some other examinations of yourself in that same report?—A. I think not; none that I know of. There is a note added to this.

Q. Where is that?—A. That is right at the bottom, but I didn't put that there. I don't know who put that there.

Q. That isn't a part of your evidence?—A. No; and that note, by the way, is not correct—all of it.

Q. Now, were you not further examined by somebody else in connection with this? I don't think it appears in the Purdy report, but in some other report.—A. Oh, yes; I was examined by the first division of the General Staff.

Q. And that appears in some report?—A. That is in, I think it is called, the report of the Brownsville affray.

Q. How was that evidence taken?—A. That was simply taken; not under oath, but was an official investigation.

Q. But not taken under oath?—A. No; not under oath. It was taken by the stenographer and, by the way, I would like to say that while the main facts are as I stated them to be as far as I recollected in that investigation, the stenographer made quite a number of mistakes, generally in matters of little moment, and made a number of grammatical errors which I don't think I made at all, although I will admit that I am not fluent of speech, but I wasn't given any opportunity to correct the typographical mistakes and the mistakes of grammar. The report wasn't submitted to me at all; that is, the proof sheets were not.

Q. Well, will you look over that report later and let us know what corrections you want to make? We don't want to do it now; we may get into it and if it is erroneous, of course I want you to correct it.—A. Yes, sir.

Q. The first thing that I want to bring your attention to is your report of August 29, under the head of "Causes." Your first conclusion was that "the soldiers heard they were not to go to Camp Mabry because Texas troops had threatened to use ball cartridges against them in maneuvers." Do you remember whether any of the soldiers themselves told you that they knew about this?—A. No; I don't think they did; I think the officers only told me that.

Q. That information was based on what?—A. On what the officers told me.

Q. It says "They knew that Colonel Hoyt made a request that the Twenty-fifth Infantry be not sent to Texas." Was that based on what the officers said?—A. Yes, sir. I don't think any soldiers told me that at all.

Q. In so far as you knew, this information was possessed by the officers and not by the enlisted men?—A. I don't know, except the officers told me; the enlisted men didn't.

Q. Are you sure of that?—A. I am positive of it.

Q. Who told you that?—A. I don't remember what officers; I think two or three of them. I know I based my report on what was told me at that time, although I can't remember where the particular conversation occurred which gave me that information.

Q. What I am trying to get is whether or not you got this direct from the enlisted men?—A. No; I never got it from the enlisted men; I don't think any of them told me.

Q. Let's take up the second conclusion: "The people did not desire the colored troops and thought they should not be sent here. I learned this *before* the rumored abandonment of Brown from prominent citizens, members of the committee of safety, etc." Can you remember anyone that gave you that information?—A. I think that

nearly all of them that I examined gave me that information. I can't remember any particular one, but I know that there were quite a number of them. I can't place any particular one, because there were so many that I don't remember who they were.

Q. Were they of the leading men, such as the mayor, Captain Kelly, who was on that committee, or what class of citizens was it?—A. I think all classes of citizens told me that. The reason that I remember this more particularly is that after I heard that Brown was to be abandoned I found rather a different sentiment in town.

Q. Tell us what you mean by that.—A. That is, they didn't express themselves so strongly on that point. I emphasized that matter in my report. I think there is a word italicised there.

Q. The word "before?"—A. Yes, sir.

Q. It reads here, "I learned this *before*"—— A. And the word "before" is in italics?

Q. Yes. Now, was the change of sentiment very marked after they found that Fort Brown was to be abandoned—the troops were to be withdrawn? What is your recollection?—A. My recollection is that it was.

Q. Among all classes?—A. Among all classes.

Q. We will take up the second sentence of that same paragraph. You say, "I think requests were sent to Senators, Congressmen, etc., to use their influence in the matter, but am not positive. If a fact, it is probably known at the War Department." Do you remember how you got hold of that information?—A. I don't remember how I got hold of that information. It was from some citizen or several of them. I know afterwards of one particular instance in which a man did write—that is, I heard of it.

Q. Do you remember who that was?—A. That was Mr. Wreford, who has a commission house on the diagonally opposite corner to the Miller Hotel.

Q. Responsible business man of the city?—A. I think he was; he seemed to me to be so, a very responsible man.

Q. Was he what you would class one of the leading citizens of the city, as far as external appearances go?—A. As far as external appearances go, I should think he was, but as far as his reputation goes, I never inquired. He seemed to me a very gentlemanly man.

Q. Now, the third conclusion, and I will read the whole of that: "Soldiers of the Twenty-fifth were not allowed to drink with white people at the principal bars in town, though in some cases saloon keepers put up a separate bar for their use, this having an opposite effect to that intended. The bartender was killed in such a saloon." Who did you get that from? On what did you base that conclusion?—A. I based it from the conversations which I had during the investigation with saloon keepers, and possibly also from general report in the town, but I remember of two saloon keepers—the principal ones in town—who told me that soldiers were not allowed to drink at the bar with white men in their saloons.

Q. In this connection did you ascertain anything about the location of another saloon out in what is known as the Tenderloin district, and which was in charge of a discharged soldier of the Twenty-fifth?—A. I did hear that there was such a saloon, but I never made any inquiry about it. I went up one day to the edge of the Ten-

Q. But I am trying to get at now, Major, the absolute evidence that was presented to you that would support your statement of its being preconcerted. Now, is there anything in what you have said up to now that couldn't have happened by a squad of 10 or 12, for instance, arriving at this conclusion after 12 o'clock or near 12 o'clock that night?—A. I don't know how long before the act it was preconcerted; I don't pretend to know anything about it. I believe it certainly was preconcerted, because they all seemed to know what they were after; they were all in a body, started out in a body—at least, I inferred so from the evidence.

Q. Now, is there anything in the evidence as presented to your mind at the time you made this report that would preclude the idea of 10 or 15 or 20 men in one company going out and participating in this raid? Couldn't they have arrived at this conclusion by concentration there after 11 o'clock at night?—A. As I say, I don't know when they made it; they may have done it after 11.

Q. So when you use the word "preconcerted," you don't know whether it was a long preconceived plan?—A. I don't know whether it was an hour before or when it was, but I believe that the sentinel on post No. 2 knew something about it; I believe that the sergeant of the guard knew about it; people who were not in the raid knew about it.

Q. What evidence did you have at that time—what particular evidence did you have upon which to make your assertion that it was a preconcerted affair?—A. The general evidence in the way these men acted.

Q. Which men?—A. The men committing the raid, who went out in town; they went all together; there was absolutely no provocation as far as I could find out at that time. They must have made some arrangement to go out together; they must have gotten their rifles out in some way; all of them couldn't have had a spontaneous resolution to do this at one time. That was my idea. This sentinel on No. 2 didn't see anything at all, he said, while the evidence of Mr. Sanborn, Mr. Rendall, Mr. McDonnel, and Mr. Martinez, all indicated to me that he couldn't help seeing somebody. I think the sergeant of the guard sounded that fire alarm for the purpose of causing—I mean the call to arms—for the purpose of allowing or permitting of these men getting back with arms in their hands, because they would be less liable to detection.

Q. Upon what did you base that?—A. Because the other men would all have their guns out of the racks.

Q. Upon what did you base that about the sergeant of the guard sounding the call to arms?—A. He told me himself he sounded a call to arms.

Q. Did you ascertain that was done on his own responsibility?—A. It was; he told me it was.

Q. The sergeant of the guard did?—A. The sergeant of the guard did, and I have [illegible] stated in my report, and made a statement some- [illegible] afterwar[illegible] what [illegible] ld me which I took down, this state- [illegible]

[illegible] Ma[illegible]

whether the call to arms was [illegible] -A. I don't recollect whether

Q. He didn't see it?—A. No.

Q. Was there anybody there that you could find out who he was?—A. Except Mrs. Evans; she said there was a gentleman living, I think, in the same house or in the same side of the house—whether this was a double house or not I have forgotten. At any rate there was another family living in there besides Mr. Evans and herself, and she said that somebody was in the house when this soldier grasped her by the hair and she screamed, and I think she said also that somebody started to come out, but whether she saw him or not, or knew him, I have forgotten, and she said that frightened the soldier and he ran away.

Q. This all occurred before she fainted? Did she tell you that she fainted, do you remember?—A. I don't think she did faint until afterwards, according to her story. She said that she had hold of the bridle of her horse when this soldier grasped her by the hair, and that he threw her down, but that her horse pulled the rein and pulled her back on her feet again, and she then screamed and the soldier ran away. I don't remember her saying that she fainted, although my recollection now may be imperfect.

Q. Now, under the head of "Responsibility before and during the fact," you say, "I do not think the commanding and other officers and some of the senior noncommissioned officers can be blamed for not discovering the *preconcerted* raid." That was your opinion at that time after a full investigation of the facts?—A. Yes, sir. I stated that mainly because of this fact, that the men hadn't expressed resentment.

Q. In other words, there was no evidence, in so far as you could ascertain, that the commissioned officers and those senior noncommissioned officers should have been put on their guard?—A. Nothing, except from these individual cases that I have related, and from the fact that it is human nature for them to more or less resent such treatment.

Q. What evidence did you have that it was a preconcerted raid—where did you get that?—A. I got that idea from the fact that I believed these men got out of the barracks sometime before the attack—before the shooting occurred—and that they must have gotten a great many rifles out of the racks in some way or other—not a great many, but 15 or 20 possibly.

Q. Might that not have been done without being preconcerted—that particular fact—might that not have been done without its being preconcerted on the part of the men?—A. The fact that the first shots that were fired were fired into the air was another indication to me that they intended to create an alarm and a supposition on the part of the rest of the garrison that they were being attacked from the outside. They were apparently in a body, as far as I could find out, from the evidence of those who saw them first.

Q. Everything that you have said up to now in answer to my question, to wit, that they got their rifles, that they fired some shots in the air, and I have forgotten the other——A. And from the general resentment that I considered must have been in the minds of the soldiers on account of these incidents—especially that of the Tate-Newton and the Evans case.

Q. That is an inference that you drew?—A. That is an inference I drew myself.

Q. But I am trying to get at now, Major, the absolute evidence that was presented to you that would support your statement of its being preconcerted. Now, is there anything in what you have said up to now that couldn't have happened by a squad of 10 or 12, for instance, arriving at this conclusion after 12 o'clock or near 12 o'clock that night?—A. I don't know how long before the act it was preconcerted; I don't pretend to know anything about it. I believe it certainly was preconcerted, because they all seemed to know what they were after; they were all in a body, started out in a body—at least, I inferred so from the evidence.

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Q. Did you ascertain that was done on his own responsibility?—A. It was; he told me it was.

Q. The sergeant of the guard did?—A. The sergeant of the guard did, and I have so stated in my report, and made a statement somewhere afterwards of what he told me which I took down, this statement, as he told it to me.

Q. Did you ever ask Major Penrose whether the call to arms was sounded or not; and if so, by whom?—A. I don't recollect whether I did or not.

Q. If you had and Major Penrose had told you he sounded it, would that change your opinion, in so far as this act of the sergeant of the guard told you so?—A. It would if he had done so.

Q. If he had told you that he ordered the sounding of the call to arms would it change your opinion as to that particular thing?—A. Why, certainly it would.

Q. Is there anything else that you can think of that you based your idea of the thing being preconcerted—that is, the evidence you had at the time?—A. I don't know that I can. I don't know that I have any other reason that I can think of.

Q. Well, now, that being the case, is there anything in what you have stated that would preclude this having been planned at half-past 11 and executed immediately after that night?—A. I think not.

Q. You say, "It is easy to say, in the light of later events, that the guard should have been doubled and other precautions taken the night of the 13th, but who could imagine that American soldiers in a body would try to murder unoffending women and innocent children?" Did you investigate at that time this battalion of soldiers?—A. I interviewed quite a number of them—possibly 25 or 30.

Q. I think I made myself badly understood. What I want to get at is, did you investigate who this body of soldiers were and what their record as soldiers was—their record as to discipline, for instance?—A. No; I did not.

Q. Do you know whether or not that body was a well-disciplined organization or not, leaving out of consideration, mark you, the events that occurred that night?—A. My impression at that time was that it was a well-disciplined body of men before I went there—before this thing happened.

Q. Wasn't it your opinion that it was an exceptionally well-disciplined body of men, leaving out of consideration what occurred that night?—A. My impression was that it was a well-drilled and a well-disciplined command.

Q. So that you must have had some such thing in mind when you said that these officers could not expect any such thing?—A. I must have had; I am sure I did have.

Q. "The commanding officer did cancel passes and send out patrols early in the evening," wasn't that, as you intimate later, "as much to allay the anger of the town people as to prevent men from committing other excesses," wasn't that to act in good faith to his promise to the mayor?—A. I think so.

Q. He had told the mayor he would cancel the passes and send out patrols and see that the men were brought in?—A. That is my impression.

Q. So that he was acting in good faith, so far as the ordinary commanding officer could be expected to act under those conditions?—A. I think so; at least that was my impression.

Q. You say, "All the officers firmly believed (most of them till morning) the garrison was attacked from the town side as the result of the assault on Mrs. Evans, the general ill feeling of the town people, etc., and this delusion was heightened by the call to arms sounded by order of the sergeant of the guard (probably too early during the firing to be genuine)." Did you investigate the various commissioned officers on that point?—A. I did.

Q. And they gave you their reasons for supposing this?—A. I don't remember that all of them gave me their reasons, but the majority of them did, I think, and I know they did say what they thought on that night.

Q. This call to arms was sounded very early in the proceeding?—A. I judged it was sounded two or three minutes after the first shots were fired, from what I heard of the matter.

Q. Would your opinion of that be changed also—your criticism of it—if you found that this call to arms was ordered by some one other than the sergeant of the guard? You say, "(probably too early during the firing to be genuine)."—A. If he had proper orders to sound it, of course he would not be to blame in any way.

(At request of counsel reporter reads last answer.)

Q. What I wanted to bring out is this: If the commanding officer ordered that call to arms, as a matter of fact, wouldn't it indicate that he thought the place was being attacked, and therefore it was a very natural and proper thing to do under the circumstances?—A. I think so.

Q. Do you know from experience how long it takes to clean a rifle? I notice you refer to it and say it takes a few minutes only.—A. I don't know from personal experience; that is, I never cleaned one myself, but I knew what the rifle was and I knew what the thong and brush was and oil drag.

Q. Have you ever cleaned one of these rifles?—A. I never have.

Q. Or any rifle carrying the modern high-explosive powder?—A. No; I never have cleaned them myself.

Q. You never have cleaned a gun since you were a cadet?—A. No; I don't think I have.

Q. On what did you base your conclusion that "the first shots were fired a few minutes"—you underscored this next word—"before midnight?"—A. I based it from the evidence of a vast majority of the persons whom I interviewed in Brownsville. I found that the time at the post was different. The time, as indicated by the evidence, in the post was, I think, ten or fifteen minutes after 12. At the time I supposed that that difference was due to the fact that one used the standard time and the other local.

Q. What was your conclusion—did you investigate that?—A. I didn't investigate that; however, I knew there was a difference in town between the post time and the town time.

Q. Do you know how much it was?—A. I think it was ten or fifteen minutes.

Q. You don't remember accurately at all?—A. No; I don't. It seemed to me that most persons in town said it occurred five or ten minutes before 12 and the evidence at the post was ten or fifteen minutes after.

Q. Did you ever inspect a gun at night?—A. I think I have, but it's been quite a number of years ago.

Q. Now, you speak of a "Responsibility after the fact," "I think Major Penrose, as soon as he believed the criminals were soldiers, should have arrested and placed in solitary confinement Sergeant Jackson, B Company; Sergeant Reid, Private Howard, and Scavenger Tamayo." Upon what did you base this conclusion?—A. I based it with regard to Sergeant Jackson upon the fact that there

were several witnesses, or at least one—I think I interviewed two—who saw the firing from the porch, and from the fact that I found those bullet marks in the Yturria house pointed to the fact that they were fired from the back porch of B Company. I didn't see how it was possible for him not to know something about it. He was also the noncommissioned officer in charge of quarters on that night.

Q. That is Sergeant Jackson?—A. Yes, sir; he had charge of the rifle racks.

Q. Well, now, on what did you base it about Sergeant Reid?—A. Sergeant Reid was the sergeant of the guard, wasn't he?

Q. Yes.—A. For the reasons I have already given.

Q. If, then, Sergeant Reid had orders from the commanding officer or any proper authority about sounding this call to arms, would you change your opinion about it?—A. That would.

Q. Then you based your recommendation for his arrest largely upon the fact that he had the call to arms sounded without authority?—A. Yes, sir.

Q. How about Private Howard?—A. He was sentinel on No. 2. I believed it was impossible for him not to have seen who did that shooting.

Q. Didn't his post extend to both sides of all the barracks?—A. It did; but in his affidavit he said he saw this boy, Tamayo, at the sinks in rear of the company, and that was in the immediate vicinity of where these men were shooting, according to the evidence I got in town.

Q. He was arrested?—A. He was among those arrested.

Q. All of these men were arrested, were they not, and held for a long time?—A. Yes, sir.

Q. Didn't the grand jury sit in this case and consider these men down there?—A. It did, I believe; I only know of that by hearsay, however.

Q. Now, this scavenger, Tamayo, is a Mexican, isn't he?—A. Yes, sir.

Q. They didn't follow your advice in his case, did they?—A. No.

Q. And, so far as you know, no bill was found against him?—A. As far as I know, there were no bills found against the men arrested.

Q. Then when you said, "Major Penrose conducted himself in a manly way under trying circumstances, although subjected to much undeserved abuse. Almost the only criticism against him is that above," you referred to his failure to arrest these men?—A. Yes. My opinion at that time was, and is now, for that matter, that he might have gotten a good deal of valuable information if he had used coercive measures very soon after the thing occurred.

Q. What kind of coercive measures do you refer to?—A. Solitary confinement—not exactly the water cure or anything of that sort, but there are cases, I suppose, in which coercive measures are used. While not resorting to physical harm they still put the person subjected to the strain to a good deal of anguish of mind.

(At request of counsel reporter reads last answer.)

A. It is something like, I think, as I have said somewhere in my report, something analogous to the sweating process used by the police. It is used everywhere in the country, as I have heard. I don't know exactly what the processes are.

Q. Do you know whether Major Penrose had facilities for putting them in solitary confinement there at the post?—A. He had some cells in the guardhouse.

Q. As a matter of fact, wasn't some ten or twelve of these men arrested, or even more?—A. They were.

Q. Well, did he have facilities for separating those men?—A. I think they were put in cells for some time, but it was considered to be inhuman, I think, and they took them out.

Q. As a matter of fact, aren't those things prohibited in our service?—A. Putting them in cells—I think not.

Q. The sweating process, I mean, as used by the police. Isn't that prohibited in the service? Have you ever seen it?—A. I don't know as I ever have. I have seen coercive measures used, but that was years ago.

Q. In the later day you have never seen it?—A. No.

Q. Now, as a matter of fact, let's see a little further. Would you, situated as Major Penrose was on that occasion, have turned those men over to the police of Brownsville for the sweating process?—A. No.

Q. So whatever facilities or whatever steps Major Penrose took in order to coerce those men to tell the truth must have been measures available for him in the post of Brownsville?—A. In the post of Fort Brown.

Q. I mean in the post of Fort Brown.—A. I would like to state that I don't mean that it should have been absolutely necessary for Major Penrose to have used coercive measures, but I do believe if he could have gotten hold of these men just as soon as he had any idea of their being guilty and used even proper methods, that he could have found out something from them.

Q. Didn't he examine these men?—A. I don't think he did until the next day.

Q. We are talking about when he found out. You start out this statement with this: "I think Major Penrose, as soon as he believed the criminals were soldiers, should have arrested and placed in solitary confinement" these few men, and it is in connection with them that we are discussing now. Now, what I want to get at is, using the class of coercion that you have indicated—— A. He had these soldiers there in the guardhouse, and he could have isolated the men.

Q. Did he have enough facilities to isolate all the men you spoke of?—A. I think there are quite a number of cells there in that guardhouse. My impression is that there are at least half a dozen or more.

Q. Let's assume that there were half a dozen, and that is enough to isolate these men, if your theory was true about it being preconcerted, what chance would there have been for coercing these men into telling that; if this was a preconcerted move and it was thought out by those men, what chance was there to have found out these parties?—A. If this preconcerted raid had been a short time before, there would have been a chance of it; in the Tamayo case there would have been a chance of it, and possibly in the case of the sergeant of the guard and Sergeant Jackson.

Q. What authority did Major Penrose have over Tamayo? For instance, could he have arrested him and put him in the guardhouse and used the coercive measures?—A. He could have done that or

either turned him over to the police. Tamayo, as I understand, lived in the post.

Q. Well, as a matter of fact, Tamayo was reported to the civil authorities, and they wouldn't arrest him.—A. They didn't arrest him. I said, I think, in my report I recommended that he be arrested.

Q. Did they decline to do it?—A. They didn't do it.

Q. At least they didn't do it. Now, it is your real, firmly fixed opinion that if these men you name here had been arrested and put in solitary confinement, you think Major Penrose would have gotten the information?—A. I think he might have. I didn't say he would have.

Q. Now, wouldn't that chance have been mighty slim on your supposition—that is, on the supposition that the men were guilty, and that they all knew of it?—A. I think the best and only chance to have gotten any information was to do it quick; to do it soon after the fact occurred. In stating that Major Penrose should have used such action as soon as he believed the crime was committed by soldiers, I may have been giving him too much time. Doctor Combe told him about the matter having been committed by soldiers only about an hour or so after it happened.

Q. Yes; we have that in evidence. But we are talking about your report now, what you had and what your mind was at the time, and I am trying to find out why you think he could have gotten at this information and what measures he would have used.—A. I think that those were almost the only measures that could have resulted in success.

Q. Then it simmers down, as I understand your conclusion, to the fact that you think Major Penrose should have put these men in solitary confinement and have held them there, with the expectation of getting information of this trouble from them. Is that the size of it?—A. That was the main way.

Q. You don't know of any other facilities at that post for securing information other than that solitary confinement?—A. And an impression on these men of the necessity of telling the truth about the matter.

Q. Do you know that he didn't make such efforts as that, aside from coercive measures?—A. I know these men were not found.

Q. I say, aside from the coercive measures?—A. I believe he did use other measures, what he thought might have been effective—might be effective.

Q. Then you believe, as a result of your investigation, that he resorted to everything short of these coercive measures which, as I understand you, was limited to his facilities and the orders on the subject, to solitary confinement in the guardhouse? That is the size of it, isn't it? The solitary confinement of the soldiers in the guard, I mean.—A. Yes; although it seems to me he would have been justified in using some strain upon them.

Q. For instance?—A. Keeping them in solitary confinement and possibly on bread and water and something of that kind and getting at them by threatening them in some way or another—that depends on the individual, as to how that is done.

Q. What form of threat would you put to the men—for instance, would you expect Major Penrose under the existing regulations to

put to these men?—A. I think he would be justified in threatening them in quite a number of ways. I don't pretend to prescribe what he might have done.

Q. I want to get at what facilities he had for coercive measures.—A. He had these facilities for placing them in solitary confinement, and I don't pretend to prescribe what he might have done. I don't pretend to be such a disciplinarian as I have intimated would be necessary in this case myself.

The court then, at 5 o'clock p. m., adjourned to meet at 10 o'clock a. m., Friday morning, March 1, 1907.

CHAS. E. HAY, Jr.,
Captain, Acting Judge-Advocate, Judge-Advocate.

THE PENROSE COURT-MARTIAL—Continued.

PART 4.

MARCH 1, 2, AND 4, 1907.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., March 1, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocates. The accused, his counsels, and the reporter were also present.

The reading of the proceedings of February 28 was dispensed with.

Maj. A. P. BLOCKSOM was reminded that he was still under oath.

CROSS-EXAMINATION CONTINUED.

Q. Major Blocksom, I will read, so that you may have a connected idea of where we left off yesterday.

(Counsel then read to witness the several last questions and answers of record.)

Q. You stated you were an inspector-general of the Army—in that capacity. Now, then, I want to ask you whether or not Major Penrose or any other commanding officer of the Army is authorized under our custom or practice to place men in solitary confinement on bread and water except as a result of a court-martial or as a discipline for a general prisoner?—A. He is not authorized to do so.

Q. As a matter of fact, then, to have done that without a trial or unless men were general prisoners would have been a violation of the regulations, orders, and customs of the service; is that not a fact?—A. It would be, and would only be justified, it seems to me, by an emergency like that.

Q. You consider, then, that this case—under these circumstances Major Penrose could legally have placed those men in solitary confinement on bread and water diet because of a suspicion?—A. He could not have placed them on bread and water diet under the regulations, but he could have coerced them in one way or another, or persuaded them, depending on the men.

Q. Let's confine ourselves to bread and water diet in solitary confinement. Had he done so, would he not have done so at his peril, under the regulations?—A. He would.

Q. Certainly; that's the point I want to bring out. As a matter of fact don't you know that officers of the Army have been tried for using coercive measures of a similar nature, as you mentioned yesterday, in time of war, to get information?—A. I don't know that they have by simply putting men on bread and water diet.

(Question read over to witness.)

A. You mean water cure?

Q. I did not specify. You mentioned several yesterday—you mentioned water cure as one.—A. My answer is yes.

Q. If it would not be justified in time of war it certainly would not be justified in time of peace, would it?—A. No.

Q. Now, I think you said, in connection with this man Tamayo—I think you included him in the coercive measures Major Penrose should have used. As a matter of fact he is a Mexican, is he not?—A. He is.

Q. Has been a native of Brownsville, or inhabitant of Brownsville, for a long time?—A. I don't know how long he has been an inhabitant.

Q. Does not belong to the Army in any way?—A. No.

Q. You interviewed him?—A. Yes.

Q. As a matter of fact isn't it contrary to law for a commanding officer to arrest or use coercive measures with a civilian in time of peace? Would he not do so at his peril?—A. I think not; when the civilian is charged with crime or a concealment of crime and is on the post reservation, and the civil authorities have not had time, or decline to do anything with him.

Q. Do I understand you to say that you think Major Penrose would have been justified and warranted, under the law, in arresting this man and using coercive measures with him that you have just testified he could not use with the soldiers?—A. I don't mean he could have used coercive measures, but he could have arrested and tried to persuade him by argument.

Q. He could have arrested him and used argument?—A. Yes.

Q. Could his threats be of such a nature as to amount to assault, under the law?—A. No; not lawfully.

Q. So he could use simply moral suasion; isn't that the size of it?—A. As far as the law is concerned, that's true.

Q. And if he had extended that so it would have amounted to an assault, he would have been liable?—A. Yes.

Q. As a matter of fact isn't an arrest legally and technically an assault, under the law?—A. I think it is.

Q. If he had laid hands on him and arrested him it would have amounted to an assault?—A. I don't know the law.

Q. As a matter of fact I don't think anybody would dispute that if he laid hands on a man in violation of his rights it would amount to an assault. That is the law.—A. My opinion is he had a right to arrest the man under the law.

Q. Do you know as a result of your investigation whether Major Penrose did examine this man Tamayo carefully that night?—A. I don't know. If he did he never said anything to me about it.

Q. You are sure about that?—A. Yes.

Q. You don't recall it, at any rate if he did?—A. At least I don't recall it. I think I would have remembered it if he had.

Q. Do I understand you to state that in your opinion this was a preconcerted affair? You did so testify yesterday.—A. Yes.

Q. Now, this man Tamayo would have been included in this necessarily, be equally culpable, would he not?—A. No.

Q. You didn't then include him in your summing up of the affair being preconcerted, that he was in collusion with the other men?—A. No; I did not.

Q. Then what reason had you for assuming that this man should be arrested and treated in this coercive way by Major Penrose if he

was not a part and parcel of the preconcerted action?—A. The sentinel on No. 2 testified that he saw him in rear of B Company barracks, at the sinks, when the firing was going on, when the firing started. That was very near the vicinity where the first firing occurred. If he was there, he must have seen it—must have seen the men doing the shooting.

Q. Did he suppress anything, any knowledge, that you know of?—A. None that I know of. I inferred only from his position that he must have done so.

Q. Did you interview the man?—A. I did.

Q. Did he talk freely to you—answer your questions freely?—A. My remembrance is indistinct on that subject, but I think he did.

Q. What was there about his examination gave you the impression that warrants your statement that he should have been treated in this way, if he answered your questions freely?—A. The fact that he was right there, present—near where the shooting was going on, was my main reason and my only reason.

Q. Then your assumption that a certain state of facts should have been seen by him, as I understand it—on that assumption you immediately concluded that this man is suppressing the truth or is not telling you the truth?—A. That's exactly the conclusion I arrived at.

Q. Well, if the man talked freely—did you examine him freely?—A. I asked him where he was that night and all about the case, as far as I remember. I don't remember what my examination was in the particulars at present, it was so long ago.

Q. You examined him again with Mr. Purdy?—A. No; I did not examine him; Mr. Purdy examined him, and I don't think I was present except for a little while during his examination.

Q. (Handing witness book.) On page 33 you notice it commences, "Matias Tamayo was first duly sworn by Major Blocksom, and on being examined by Mr. Purdy, testified as follows." Do you remember now whether you were present at the examination?—A. I think I was only present a little while, just to swear him in, and I then went out to look up other witnesses.

Q. Do you recall any variation in his manner or in his testimony there than given to you at the other examination?—A. As I said, I saw only a small portion of it; I don't remember what his demeanor was.

Q. I think you said yesterday that you were examined by the General Staff, were you not, last December?—A. Yes.

By the judge-advocate:

May it please the court, I would like to object to the introduction of what Major Blocksom said or did before the General Staff as having nothing to do with the points brought out by the prosecution on the direct examination. It is going largely outside of the record.

By counsel for accused:

This witness has testified without objection that he was examined officially, and I want to show what this was. Certainly we have a right to know and to go into it if he testifies to it. He says, as I recall, that he did not testify to this under oath, but that it was the equivalent, as every army officer knows—he testified officially; he gave certain statements officially. The only difference, may it please the court, in the world between the statement of an officer under official examination and of an officer under oath is, in the one case perjury would not lie and in the other case it would. As a matter of fact, we expect

to go into this and let the court know all about it. We have a right to it. It is part and parcel of the report. This was gone into by the judge-advocate, and that fact alone would open it up, so as [we] could examine on it. Any report that this witness, or any other witness, especially this witness, who is an inspector, makes officially in regard to the matter must be the truth, of course he must have some basis for it, and we want you to know what the basis is. We recognize the fact that this examination was made six months after, but it is incorporated in a report not only published to the Army, but published to the Senate and to the country, and we want to know and we have a right to know and this court has a right to know, and in our opinion, at this late stage, it is absurd to bring the question up at all.

By associate counsel:

I would like to quote the rule, which the judge-advocate is well aware of—simply call his attention to the fact that on cross-examination anything the witness has previously stated, either in writing or verbally, may be called to his attention in connection with his testimony on any particular facts, and this is a previous statement made before an investigating body in connection with the report, and was submitted and put before the judge-advocate. Clearly within the rule.

By the judge-advocate:

Without commenting on whether my remarks are absurd or not, I will say, the only official things that are in evidence contained in this report is the letter of Major Penrose, on page 12 of this volume, and the letter of Major Blocksom, on page 42 of this volume. Nothing else has been submitted.

By the counsel:

Only one thing. Right straight along we have taken every witness that has appeared before the Purdy investigation and every other investigation, and have asked them questions from that record. No question about it; there can't be any question about it. We have nothing else to say.

The accused, his counsels, the witness, the reporter, and the judge-advocates then withdrew and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed to announce the objection is sustained, and the question will not be answered.

By counsel:

Will the court give us a few minutes, so we can cite the law on that? We were so satisfied that we were right we did not take the trouble to look it up.

The court then took a recess until 10.45 o'clock a. m., at which hour the members of the court, the accused, his counsels, the witness, the reporter, and the judge-advocates resumed their seats.

By counsel:

May it please the court, and for the purpose of solely directing your attention to the rule of law on this subject, which we have hastily examined under all the authorities available to us, we find and maintain that we can go into this in cross-examination, directly, and for other purposes. If we can go into it for any purpose whatever we maintain, of course, that that is sufficient, but there are several grounds upon which we can go into this, which justify and warrant us going into it, and first I read to you from Davis's Military Law, the recognized authority in this country. Under the head of "Cross-examination," page 285, I read as follows: "The right of cross-examination is in general limited to matters stated by the witness in his direct examination. As it is the purpose of the cross-examination to test the credibility of the witness, it is permissible to investigate the statements of the witness with respect to the parties and to the subject of the litigation. His interest, his motives, inclinations, and prejudices; his means of obtaining a correct and certain knowledge of the facts to which he bears testimony. The manner in which he has used those means, his powers of discernment, memory, and

description. On cross-examination a witness may be asked questions which would not be pertinent or relative on his examination in chief." Just a word of explanation about this rule. This would be admissible, we claim, to show, first, his interest, which he yesterday stated in distinct terms that he had in this case—although I wish to say right here I believe that was not copied in the record exactly as stated; but I make no point of that. Second, we can go on into it on the ground of his motives, or prejudices, or inclinations; his means of obtaining a correct and certain knowledge of the facts to which he bears testimony at any stage of the proceeding, and especially the manner in which he has used those means. To test his powers of discernment, memory, and description. There isn't a single statement in that, may it please the court, that really does not lay down the bars and throw the gate wide open to going into any statement, makes no difference to whom, that this witness has made previous to this. Now, from the same authority and another rule under which we quote, page 292, under the heading, "Inconsistent statements:" "Witnesses may be shown by their own testimony or that of others to have made statements out of court not consistent with and in some cases opposed to those made in their sworn testimony. Such statements must have been relevant to the case, however, and fully identified by the admissions of the witness or the testimony of others." Under this rule permit me to say simply that it is clear that this witness was being examined directly—directly as to the matter in issue—and, as a matter of fact, we can show and we expect to show, may it please the court, that this examination of this particular witness among others was the very basis and cause of these charges. I ask you as men of experience, you don't have to be lawyers, as men of experience, can you get anything that is more pertinent or relative to the issue? This same language exactly I cite to you in Davis's Elements of Military Law, on page 85. Now, I am not going to take up the time of the court reciting these, I shall simply cite you to McKelvey on Evidence, one of the Hornbrook series, one of the recognized law books, page 335. I will read only the black text: "The scope of the cross-examination is not limited when directed to the credit of the witness." That is simply one of the many rules that will admit this. And clearly, explicitly to the same effect, is section 482 of Wharton's Criminal Law. I won't take the time of the court to read that either. Now, we ask distinctly, because we feel the rights of the accused are being prejudiced by our inability to go into this and show just what occurred and why these charges were brought, etc. It is the history of the case.

By assistant judge-advocate:

May it please the court, with reference to the last quotation cited by the counsel, contained on page 335, McKelvey on Evidence, in which the black-letter text only was quoted, and was quoted as follows: "The scope of the cross-examination is not limited when directed to the credit of the witness." That is true, and its says further: "There is no distinction between the American and English cases in respect to this rule." But on the previous page it states: "The cross-examination, according to the English rule, may extend to any matters relative to the case, while the American rule limits it to the matters covered by the direct examination." In this case it seems that if the scope of the cross-examination is to be considered as unlimited, then it must also be considered as being directed against the credibility of the witness. Is that the intention of the defense?

By the counsel:

We simply claim that credibility is one of the many reasons for the admissibility of this cross-examination. We don't rely solely on one reason, and while it is true as a general rule, as the counsel says, it is limited to the matters brought out in direct examination, the military rule and the other rules all say that for certain reasons it can be admitted.

By assistant judge-advocate:

It says further here, not in the black text, that "The English courts have said that such a course may be adopted—that is, that the cross-examination may extend to any matters relevant to the case; but the doctrine generally adopted by the American courts is contra and confines the cross-examination to such matters as have been gone into on the examination in chief. That under

this doctrine, if the cross-examination extends beyond the ground covered by the direct examination, the witness becomes the witness of the party cross-examining. The testimony brought out binds him as though he had called the witness himself, and in bringing it out he is confined to the methods of the direct examination." And can not ask leading questions in that case.

By counsel:

We are delighted to have that rule read to the court. If we open up something that is not relevant, mark you, with this witness, whatever the grounds on which we open it up, we are bound by his questions and pro tanta he becomes our witness, and we are willing to be bound by anything Major Blocksom says on collateral matters not relative to the issue or anything relevant to this issue, we should say. We can go into and in so far as it is relevant he still remains the witness of the other party, and to attempt to shift that and require us to call him as our witness to ask him about things to test, for instance, his credibility is certainly going way beyond any practice we have ever heard of. We ask the court to consider these things that have been cited.

By assistant judge-advocate:

In reply to the counsel I would like to state that if the cross-examination touches not only upon things relevant to the issue, but goes beyond what has been brought out or touched upon in the direct examination, that he becomes bound by the witness, and he can not go beyond what is touched upon in the direct examination unless he intends to attack the credibility of this witness.

By counsel:

We will abide by the rule as laid down in the military text-books or any others. We don't care; we simply want the court to pass on the rule.

The accused, his counsels, the witness, the reporter, and the judge-advocates then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed to announce the decision that the court, upon reconsideration, adheres to its ruling upon this question.

By counsel:

Do I understand that this precludes my cross-examination of this witness on previous statements made?

By the president of the court:

I will say for the court, if there is no objection, in order to save time, I should say no; that the objection relates simply to the particular question.

By the judge-advocate:

May it please the court, I think the objection made by the prosecution did not refer particularly to that one question, and, if the court will grant the indulgence, I would like to have the objection as stated at the time read over. I think the form of objection, in other words, was not to the question.

By the president of the court:

I will say that the objection ran to the effect that only a part of that report had been properly brought before the court in evidence. I think that answers your question.

Counsel then handed witness a document, asking him to read same on page 293.

The court then took a short recess while witness examined document, after which the members of the court, the accused, his counsels, the witness, the reporter, and the judge-advocates resumed their seats.

Q. I hand you the book from which report of your original report was read on yesterday, under the seal of the War Department, at

page 273 et sequentes, and ask if that is the report you referred to yesterday in your evidence, and if that is a correct report of the statements you made at that time?—A. It is substantially correct. There are a few unimportant errors which I will explain as we go along.

By counsel:

With the understanding that we don't purpose going into that part of this case contained in here in so far as it relates to Captain Macklin, which is properly excluded, we are more than willing to have this introduced in evidence for the consideration of the court, and with that limitation we will have the entire report read. We take it, of course, that this court has nothing whatever to do with any charges against Captain Macklin. Is there any objection to this being read and incorporated in the record, exclusive of that part about Captain Macklin?

By the judge-advocate:

I have no objection to its being introduced.

By associate counsel:

This says so much in regard to Captain Macklin, as associated with the case of Major Penrose, it will be almost impossible to read it and not include those remarks concerning Captain Macklin. The only objection Captain Macklin has to this matter being read before this court is, he doesn't wish this court to try his case or any examination to be made on that part of the report. As far as anybody knowing what is in this report that deals with Captain Macklin, he has not the slightest objection. I just make this statement to show that those parts concerning Captain Macklin are not subject to examination.

By the judge-advocate:

In reply to remarks of counsel I will say for the prosecution that we have no objection to the parts referring to Captain Macklin being omitted from the reading, but we do insist on the right that anything of importance bearing on the case of Major Penrose and which will not bear on Captain Macklin immediately being introduced before the court.

The associate counsel then read to the court the testimony given by Major Blocksom before the General Staff, and a true copy of portion read is hereto appended and marked ——.

The court then took a recess until 2 o'clock p. m., at which hour the members of the court, the accused, his counsel, the judge-advocates, the witness, and the reporter resumed their seats.

The witness, Maj. A. P. BLOCKSOM, after being reminded that he was still under oath, testified further, as follows:

CROSS-EXAMINATION CONTINUED.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

The judge-advocate:

I desire to remark that the questions and answers read immediately before lunch are now in evidence before the court, having been read from a copy under the impressed seal of the War Department, and as such they are the best evidence of its contents, and being introduced by the defense during the cross-examination of a witness for the prosecution, being new matter, the defense has now made the witness its own, and we will object to any leading questions upon the part of the defense on these new matters.

Counsel for the accused:

We certainly do not make this witness our own in cross-examining him on anything that is pertinent to the issue. We will do this no more; we will

abide by the law on the principle, pure and simple, and when that is complied with we will abide by it and nothing else.

Assistant judge-advocate:

May it please the court, the counsel for the defense has just stated that this cross-examination is being conducted on matters relevant to the issue. That may be so, but it is not being conducted with reference to matters brought out by this witness in his direct examination. I should like to read a short note here, which is found on page 335, McKelvey on Evidence, which regards the right to put leading questions to a witness on cross-examination not brought out on the examination in chief. (Reads from McKelvey on Evidence, page 335.)

Counsel for the accused:

May I ask, will the counsel explain what point he is trying to make?

Assistant judge-advocate:

I wish to make the point that inasmuch as by the introduction of new matter not brought out in the direct examination of this witness the defense has in so far made the witness its own and on the cross-examination can not ask leading questions any more than it could had it postponed the introduction of this testimony or this document in evidence until later on in the course of the trial, when the defense could properly have recalled Major Blocksom as a witness for the defense, and unless the purpose is to impeach the credibility of the witness, the prosecution claims that the defense is limited in its cross-examination as to the methods ordinarily pursued in direct examination and should not go beyond those limits.

Counsel for the accused:

All the reply I have to make is that this witness is on cross-examination, and when we have exceeded it it is within the province of the prosecution to make specific objections to it. His remarks are too general to make any reply further than that.

Q. You went to Washington about December 4 last, I believe?—A. I left St. Louis on the 4th, I think.

Q. Did you on or about that time send a telegram to a Mr. Kelly or Major Combe, the mayor of Brownsville?—A. Sent one to Captain Kelly.

Counsel for the accused (to judge-advocate):

Will you let the Major see that book? It ought to be page 184, I think.

(Judge-advocate hands witness book.)

Q. Have you examined it?—A. Yes.

Q. Is that the correct report of the telegram itself?—A. It is, as far as I recollect; I think it is absolutely the same.

Counsel for the accused:

If there is no objection we will read the telegram.

The judge-advocate:

The reading of that telegram, unless it is to be introduced properly in evidence, is subject to the same objection as was made this morning to the official report and the official conversation had by Major Blocksom with the First Division of the General Staff, and we object to it on the same ground.

Counsel for the accused:

Do you object to the reading of the report?

The judge-advocate:

Yes; unless, as I say, it is to be introduced properly in evidence before the court.

Counsel for the accused:

If it is read it becomes a part of the record.

The judge-advocate:

What I mean to say is, if it is the purpose of the defense to read this in evidence—to have it submitted in evidence—we insist that it be read from an authenticated copy.

Counsel for the accused:

Certainly we want it read from that.

Associate counsel for the accused (reading copy of telegram from page 184 of book entitled "Brownsville Affray"):

ST. LOUIS, MO., *December 4, 1906.*

Capt. WILLIAM KELLY, or Mayor FREDERIC COMBE,
Brownsville, Tex.:

Am ordered to Washington on Brownsville matter. Desired, nearly as possible, length of time between first and last shots fired by raiders; about what time first shots were fired, and how long after first shots rolls were called, and whether roll calls were completed before last shots were fired; what kind of night it was; how streets of town and rear of barracks were lighted—gas, oil, or electric lights; how persons who saw raiders knew whether they were soldiers or citizens, black or white; where, when, and by whom cartridge shells, etc., were picked up next morning; how many, and what was done with them; distance from barracks wall to Tillman's saloon; kind of uniform policemen wore, etc. Wish affidavits of Mr. and Mrs. Randall, of telegraph operator, of Martinez, Bolack, and Bolack's daughter, Baker, Moore, Borden, Chase, Odin, Canada, Starck, Madison, McDonald, J. P., Thorne, Elkins, all policemen, Mrs. Cowan, Mrs. Starck and their children (children important), Preciado, and other witnesses to shooting at Tillman's saloon. Any other evidence you think important or have discovered since. Nearly all the persons mentioned gave evidence (unsworn, I believe) before Citizens' Committee, a copy of which I have. Send affidavits to me at Army and Navy Club, Washington, and wire me there, collect, probable date of arrival of papers. If any expense, send me account.

BLOCKSOM, *Major.*

The judge-advocate:

This telegram to William Kelly, just read, we maintain is also new matter, and announce our purpose to object to leading questions upon this or other new matter introduced at this time by this witness by the defense.

Q. How long after this was it that you appeared before the General Staff? Do you remember?—A. Very soon after my arrival in Washington, I think on the 8th, that I was interviewed by the General Staff.

Q. Having introduced this, now I want to go back to where we left off this morning—I should have said, rather, to where we left off before attempting to introduce this, and go back to your heading "Responsibility after the fact" in your original report, dated August 29. First, I want to ask you if you know what the status of Sergeant Jackson, of Company B, was that night? That is to say, as to sick report, do you know whether he was sick in quarters or not?—A. I don't think he was, because he was noncommissioned officer in charge of quarters.

Q. But might he not have been on sick report also, or did you investigate that?—A. I didn't investigate that.

Q. Did you take a statement from him at all?—A. Yes; I won't be certain of that, either, unless his was in my report; but I don't believe it was.

Q. I don't remember myself whether it was.—A. I think it is in

my report, if I interviewed him, and I think I did, anyhow. I am positive that I interviewed him.

Q. Well, as a matter of fact, if he was on sick report he would not have fallen in ranks and assumed charge of the company, would he, naturally?—A. I don't know anything about that.

Counsel for the accused (to judge-advocate):

What page is it on?

Assistant judge-advocate:

Page 55. However, that was taken by Captain Lyon.

Q. We haven't it here now. In looking at the report that you incorporated, being your report—or, rather, it is incorporated in your report at that time an affidavit taken before Captain Lyon?—A. Yes.

Q. Do you recall any other separate investigation of Sergeant Jackson?—A. I had a talk with him myself.

Q. You didn't take any notes of it?—A. No.

Q. And you don't know whether you brought out that fact about him being on the sick report?—A. I do not remember it. I am positive I did not; I think I would have remembered it—I am certain I would have remembered it.

Q. Now, you make use of this expression, "The officers appeared to be trying to find the criminals." Do you have any distinct impression now in your mind as to what efforts they were making, what specific efforts or what individual efforts they were making that particular morning?—A. They all told me that they were investigating——

Q. May I interrupt you a moment? I think you also stated that in your other investigation—will you pardon me until I look that up? I want you to consider the two together.—A. Yes.

Q. Now, in your examination before that committee the question was asked as follows: "Q. Major Blocksom, in your report you state that you 'can not too strongly urge officers of the battalion being impressed with the necessity of discovering the criminals. They seemed to be trying, but were hindered by ill feeling shown them there.' Did you have the impression at that time that the officers were doing their whole duty? At least you imply in the form of your message that they might not be doing their whole duty to find the criminals.—A. I did have that impression, but it arose from the fact that they hadn't found out anything at all more than from anything else that I can think of." Now, I believe, with the exception of your original telegram, which I should like to introduce in this connection to show the whole thing before the court and for your consideration——

Counsel for the accused:

Those are the only two statements I have in mind; I will introduce this other telegram later on the subject.

Q. (Continuing.) Now, when you made these statements, taking up first the one in which you said, "The officers appeared to be trying to find the criminals," what was lacking, if anything, in their efforts as far as you determined at that time, to discover the criminals?—A. I would say that there was nothing except they couldn't

get any material results. I knew at the same time that they were very much prejudiced against the people of Brownsville, but——

Q. It is after the event when they were prejudiced?—A. Yes; they were prejudiced against the people of Brownsville both before and after, I think, as far as that is concerned.

Q. The officers were?—A. Yes, sir.

Q. Well, we will take up the question of the prejudice of the officers. Well, do you want to say that the prejudice existing among these officers prevented them or interfered with their honest efforts to locate the criminals?—A. I don't say that it did. I say the idea entered my mind that it might have done so.

Q. Have you any specific ideas, so far as Major Penrose was concerned—let's examine him—wherein did he fail, if you can tell the court, of doing his whole duty to locate the criminals?—A. I can not say, except that I had those ideas.

Q. You thought his prejudice really interfered with his honest effort?—A. I don't know that it did. I say that I inferred that it did from his lack of success; it may have been an element in the case.

Q. Did you infer it at that time, or was it later on?—A. I inferred it at that time and later on, both.

Q. I thought you told us yesterday that Major Penrose came to you with everything he got hold of practically?—A. So he did. If he was hindered at all, it must have been unconsciously; I don't know.

Q. You can not put your hand—finger—on anything that is tangible that he neglected to do to locate the criminals—I mean can you tell us how this feeling you spoke of manifested itself—that is, this feeling of resentment toward the people of the town? Can you give us any idea how that interfered with his performance of that investigation or his carrying on that investigation?—A. I can not give any particular instance that I know of, except possibly that he wasn't receptive to Doctor Combe's statement to him when he came back with Captain Lyon.

Q. That is, when they went to call that morning?—A. About 1 o'clock that morning.

Q. That is the only thing you can think of that manifests his feeling of resentment?—A. I don't know whether it resulted from resentment or not, but it might very well have done so.

Q. Well, did you go into a complete investigation with him as to just what occurred at that time? Now, taking up the time you refer to, at 1 o'clock, as I understand you to say, you think Major Penrose's feeling of resentment interfered with his investigation of his men? Now, let's limit ourselves to that time. Did you yourself go into an investigation of Major Penrose—talk with him at the time of your first investigation?—A. My impression is that we discussed nearly every phase of the affair, and I am sure that we discussed that phase of it, though I don't remember when or where.

Q. Now, did he at that time or at any subsequent time, give you any information so that it left an impression on your mind that other reports perhaps were made to him at or about the same time, that would have a direct bearing on his mental attitude?—A. I have no recollection now.

Q. Did he say anything to you about having an investigation made of any kind as to what had happened in the post about that time?—A. Said he was conducting an investigation.

Q. Major, I am talking about the time when Major Combe came in, just in that particular little period right there. Now, I want to know whether Major Penrose gave you at any time during your numerous talks with him the idea that he had an investigation made about that period to determine anything about what was going on in the post?—A. My impression is that he told me——

The assistant judge-advocate:

I object to that question. It is inadmissible as to what Major Penrose said afterwards as to what precautions and what measures he had taken; admissions against his own interests are admissible, but claims made afterwards to an inspector are not admissible.

Counsel for the accused:

I haven't anything to say except to remind the court that Major Blocksom's whole investigation is being cross-examined upon. You understand we have got a right to know on what he formulates his opinions.

(The reporter, at the request of the court, read the last question and the objection and reply thereto.)

The accused, his counsel, the judge-advocates, the witness, and the reporter then withdrew, and the court was closed, and, on being opened, the presiding officer announced, in their presence, as follows:

I am instructed by the court to announce that the objection is not sustained. The question will be answered.

A. My impression is that Major Penrose told me that when Doctor Combe came back with Captain Lyon that he, Penrose, had another roll call and found all the men present or accounted for. I know that he said that in his letter of August 15 to the military secretary of the department, but as far as making proper efforts were concerned——

Q. One minute. I think that is not covered by the question. (To reporter:) Will you read the last part of the question?

(Reporter reads as follows: "Q. * * * Now, I want to know whether Major Penrose gave you at any time during your numerous talks with him the idea that he had an investigation made about that period to determine anything about what was going on in the post?")

A. I have no recollection of anything else.

Q. Did you, as a result of your investigation of this affair, and about which you reported, find out that Major Penrose had made no effort whatever, aside from this roll call, to ascertain what had been done in the post during this period, from the time the firing commenced up to, say, the time he dismissed two of his companies?—A. I don't understand what you mean.

Q. (Reporter reads question.)

A. When he dismissed two of his companies was much later than that.

Q. Did you learn nothing about any inspections that he had made around the post during that period?—A. Yes; there were some inspections made which I had forgotten about; at least, there were some reported, whether by his order or not, I don't know, however.

Q. Did you know at any time, do you think?—A. These lines of defense that were formed were composed of different companies, and there were some reports sent in about things that had been found out; one of them was——

Q. Well, I don't care for that unless it relates specifically to the

question.—A. As I remember it, some corporal of C Company reported that he had seen a number of men out in the street opposite D Company barracks.

Q. Some corporal of C Company reported that he had seen men where?—A. Out in behind the wall in the street opposite D Company.

Q. That is the one next the river?—A. Yes, sir.

Q. When was that reported to Major Penrose?—A. As I remember it, that report was made about half past 1.

Q. Was it before or after Major Combe had come in there?—A. I think it was afterwards, although I am not positive about that; whether Major Penrose reported that to me I don't remember; it may be that I derived my recollection after from the affidavits on that subject.

Q. Well, your recollection of that is that reports of that were made to Major Penrose after Major Combe came in?—A. As far as the time is concerned, I can not say.

Q. What is your best recollection?—A. I have no recollection of it.

Q. Now, was there anything else besides that, now that you think of it, that Major Penrose did?—A. I don't know whether Major Penrose did this or not.

Q. Is there anything that he did aside from calling the roll and stationing his men along there to ascertain what had been going on in his post?—A. There is nothing that I recollect now.

Q. Do you have any recollection of his having sent out patrols for that purpose?—A. He sent Captain Lyon out.

Q. I mean in the post; I am not referring to having sent Captain Lyon out.—A. I remember something about patrols being sent out—about an order being given by somebody, but I don't know whether it was Major Penrose or not.

Q. But some were officially given for the purpose of examining into what had happened in the post?—A. I don't remember.

Q. I would like to have you, if you can.—A. I remember of a report being made of the ordnance storeroom being broken into—about some of the men having discovered that, but my remembrance of that is that it was long afterwards.

Q. Now, as a matter of fact, didn't that occur the night that the battalion left there?—A. Yes; it occurred on the 24th.

Q. So that was eleven or twelve days after this other?—A. Yes, sir.

Q. But what I am trying to get at is to get you to give us your best recollection of it, now, as to whether or not during this period—the crucial period, if I may use that word—to wit, from the time the firing commenced to, say, half an hour or more after Major Combe, the mayor of Brownsville, came down there; whether or not Major Penrose didn't personally—or, it wasn't done officially—make an examination of the post to ascertain what had happened, what was going on? Wasn't a patrol sent out, as a matter of fact, under Major Penrose's orders to ascertain what had occurred?—A. I have no recollection of such.

Q. You don't recall that at all?—A. No.

Q. Now, was there no examination made of any men by Major Penrose, or under his direction, during this period to ascertain what had been going on—about discovering any such thing as that?—A. None that I know of.

Q. Didn't Major Penrose tell you he had investigated this sentinel and this man Tamayo that you spoke of this morning during that period, and had him examined by others?—A. Yes; he told me he had him examined, but I don't think he said during that period. I have no recollection when he said that he examined him, but my impression is that it was later.

Q. But your impression is not enough to make it a positive assertion that it was later?—A. No; but that is my impression.

Q. Then, if there was a patrol sent out, and if these and other men—this man Tamayo and others—were examined and the results reported to Major Penrose, it made no impression on you, and you didn't have it in mind when you were giving this evidence?—A. I don't know; I never did have it in mind that I now recollect of.

Q. Now, you say, "I believe the battalion had an excellent reputation up to the 13th of August, but the stain upon it is the worst I have ever seen in the Army." Now, I think you stated that was a fact up to the night of that occurrence, that its reputation was beyond reproach?—A. As far as I knew.

Q. I read again: "Many of its old soldiers who had nothing to do with the raid must know something tangible as to identity of the criminals. If they do not disclose their knowledge, they should be made to suffer with others more guilty, as far as the law will permit." Do you recall what particular evidence you based that statement on?—A. It was simply an inference on my part.

Q. From what?—A. Of my knowledge of company affairs of soldiers.

Q. That was based exclusively on your service, the acquirements of the service?—A. Yes.

Q. You had no positive evidence of any kind as an inspector, aside from your knowledge as an army officer that this was true?—A. I did not.

Q. What I am trying to get at is this: There was nothing except your inference from the situation as a soldier, that they must know?—A. That is what I inferred.

Q. There was nothing told you by any of the officers, the enlisted men, or by the people in the town that bore directly on that point?—A. There was not.

Q. While we are speaking of the investigation, I want to ask, did you ever get anything from any of the enlisted men in your examination of them, that would authorize you to report that any particular individuals were guilty—I mean any particular individuals of the Twenty-fifth Infantry, stationed there at Fort Brown?—A. Only because of their position.

Q. You didn't catch the whole question. (Reporter reads question.)—A. The only thing that I can recollect of was the sergeant of the guard telling me that he had this call sounded.

Q. Now, then, if that call was sounded, as a matter of fact, under the direct orders of the commanding officer, even that would be removed, wouldn't it?—A. If I knew that the sergeant of the guard sounded it after he had received positive instructions from the post commander, it would; at the same time the noncommissioned officer would be convicted of telling me what was not true when he said he had done it himself.

Q. What I am trying to get at is this: Did you as a result of your investigation of any of the enlisted men down there, get anything in the nature of a clew?—A. I did not.

Q. Showing the guilt of any individuals?—A. I did not.

Q. Now, then, I want to ask you, Major, this was three days after the thing occurred, wasn't it, or five days?—A. I didn't get down there until four days and a half after this thing occurred.

Q. Well, between four and five days?—A. Yes.

Q. Now, what I want to ask is this: I want you to tell me what there is in human nature, or otherwise, that would render those men more susceptible on the 14th than on the 18th, to giving a clew? In other words, why should not you get this clew—why should the officers there get this clew and you not be able to get it?—A. The officers didn't get a clew.

Q. You say the officers failed to get any clew because they didn't take vigorous measures at the time. Now, what is the reason that you think they ought to have gotten it four days earlier, when you failed to get it four days later?—A. Because when I got there the men had time to complete, you may say, the conspiracy.

Q. Wasn't that conspiracy completed, as a matter of fact, Major, when the firing was done that night?—A. As far as the individuals who did it, perhaps it was.

Q. As a matter of fact, if it was preconcerted, as your theory of the case maintains, would not all of this [have] been thought out and been carried out in accordance with this preconcerted idea, so that it would be just as difficult on the morning of the 14th to get it as on the morning of the 18th?—A. I don't think so.

Q. Tell us why.—A. A great many of the men on the night in which this occurred didn't know anything about it, but through company gossip they could not have helped finding it out in the next day or two, but by the time I had gotten there, I think, everything had crystallized; they had entered into this what is called "conspiracy."

Q. Did you get any evidence of company gossip going on?—A. I don't know; but I know that as a matter of fact it did go on. I am judging this from human nature.

Q. If you are judging this from human nature, I want to know what there is in human nature that will make a man tell on the 14th, the morning after the thing occurred, of a preconcerted affair that he won't tell on the 18th?—A. Certainly; but these men who committed the act were not going to tell on the 14th any more than on the 18th, but there were others who found out who had committed this thing. That is my opinion.

Q. In that connection I want to ask you, did you find out what orders Major Penrose gave looking toward finding out from these men that you claimed are innocent who the guilty were?—A. I know that he said that he was making investigations of everybody right from the time the matter occurred.

Q. Do you know whether or not he gave special instructions when examining noncommissioned officers and the old men in the service to try to ascertain in every possible way about it?—A. I think he did.

Q. And did you ascertain, as a result of your investigation, that certain trusty men were ordered to look out for company gossip

wherever men were assembled, told to watch it and report it?—A. I can't say that I did.

Q. Will you say that you did not?—A. No; I can not say that I did not.

Q. So those orders may have been given?—A. They may have been given; yes.

Q. Well, if that course was pursued as a matter of fact by Major Penrose and his officers, they probably did all they could short of these coerced measures referred to?—A. It seemed to me so. As I said before, the only reason I had for thinking they did not was the fact they didn't find anything at all.

Q. It wasn't based on any act, was it?—A. No; specific want of working at the thing, as far as I could see.

Q. As a matter of fact, did you take the statements of all those officers there?—A. I did.

Q. Did you examine them separate and apart or all together?—A. I examined them separately.

Q. Now, we will take up the question of the recommendation you made; I read, "If satisfactory evidence concerning identity of the criminals does not come from members of the battalion before a certain date, to be fixed by the War Department, I recommend that all enlisted men of the three companies present on the night of August 13 be discharged the service and debarred from reenlistment in the Army, Navy, or Marine Corps." You recommended that when you made that report on the 29th of August?—A. Yes, sir.

Q. Did you have in mind in making this recommendation that were your recommendations carried out the Army itself would be unable at any future time to locate the criminals and bring them to justice?—A. I knew that that would be the effect of it.

Q. And, as a matter of fact, did you have in mind the recommendation being carried out would render it practically impossible for the civil authorities to bring them to justice?—A. No; I did not.

Q. Well, as a matter of fact, would it be practicable for them, if the men were discharged and scattered throughout the United States?—A. I think it would in fact be more practicable.

Q. You think, then, if the Army dismissed them that the civil authorities would have a better chance than the Army to bring them to justice?—A. Yes; I think so; at least as good a chance, probably better.

Q. Will you tell us why?—A. Because the men would be separated and would not be able to exert the moral influence on each other which they do in companies. That was not the reason I made the recommendation.

Q. As a matter of fact, these men being scattered throughout the country, do you think the civil authorities in Kansas, for instance, would be as much interested in bringing those people to justice as the people in Brownsville or in Texas?—A. I don't think they would.

Q. Then the more those men were scattered the less interest by the civil authorities would be taken?—A. They had already been taken out of Texas.

Q. What I want to get at is, what you had in mind at the time and not what was subsequent.—A. When I made the recommendation the troops were in Oklahoma; it wasn't subsequent.

Q. Now, the feeling there at Brownsville, certainly after the night of the 13th–14th of August, was very intense against these men, was it not?—A. It was.

Q. And you didn't believe a colored man—one of these men—if turned over, would have a fair trial?—A. I was finally convinced that they would not have a fair trial.

Q. Now, with that intense feeling against these men, would not the knowledge of that feeling, guilty or not guilty, have a very strong effect on making men situated as those Twenty-fifth Infantry men were disposed to keep from their officers and everybody else any knowledge of what had occurred?—A. That would simply be an opinion of mine, if I gave it.

Q. Isn't that human nature?—A. I think that the men would believe that their officers would look after them to the best of their ability.

Q. Would you, as an officer, voluntarily have turned those men over to the civil authorities of Brownsville for treatment?—A. I would not.

Q. You advised accordingly?—A. Yes.

Q. Now, wouldn't it be natural that these men would have thought the same, knowing that it would cause the same result?—A. That undoubtedly would have an influence on them.

Q. Well, wouldn't that, so long as the men remained in Brownsville, tend to make them secretive? Is that not true?—A. It would make them more secretive; at least in my opinion it would.

Counsel for the accused:

In this connection we want to have this telegram read, if there is no objection.

The judge-advocate:

There is no objection to that.

Associate counsel for the accused (reading telegram on page 10 of Report of Brownsville Affray):

CAMP MABRY,
Austin, Tex., August 19, 1906.

MILITARY SECRETARY OF THE ARMY,
Washington, D. C.:

Following telegram received from inspector:

"BROWNSVILLE, TEX., *August 19.*

"CHIEF OF STAFF, CAMP MABRY,
"*Austin, Tex.:*

"Arrived last night. Troops under proper control, although town people are still very much excited and men all carrying arms. After consultation with the post officers, the mayor, only prominent citizens, strongly recommended Company A, Twenty-fifth Infantry, be not sent here for the present, at least; otherwise grave trouble almost certain to ensue on road in the vicinity. Every effort being made to discover murderers. Recommend all officers now on detailed service from this command that can be spared be sent here soon as practicable.

"BLOCKSOM, *Major.*"

Recommendation to divert Company A is approved. All available officers, four in number, already sent to Fort Brown.

MCCASKEY, *Brigadier-General.*

The witness:

That word "detailed service" should be "detached service." That is a mistake.

(Reads telegram marked "B′," on page 53 of same report, as follows:)

BROWNSVILLE, TEX., *August 20, 1906.*

THE MILITARY SECRETARY, UNITED STATES ARMY,
Washington, D. C.:

Causes of disturbance are racial. People did not desire colored troops here and showed they thought them inferior socially by certain slights and denial of privileges at public bars, etc. Soldiers resented this. There were several individual encounters between soldiers and citizens. About midnight of 13th party of soldiers, probably 9 to 15, made raid through several squares of town, firing 75 to 150 shots, killing a bartender and dangerously wounding lieutenant of police. They also fired into several houses where women and children narrowly escaped being shot. Raid lasted from eight to ten minutes. Claim made that citizens fired first, but, I believe, without foundation. Although act probably preconcerted, do not think commanding officer could have foreseen it. Citizens can not identify raiders, and authorities have made no demand for them. Investigation now going on has as yet discovered none. Commanding officer to-day invited a committee of three citizens to assist in conducting investigation. People are still in a state of great nervous tension, and men nearly all carry arms openly at night. Women and children still frightened. I consider it necessary to remove colored troops; the sooner the better. While now apparently under perfect control an entire company is on guard each day, a great strain with little prospect of relief. Differences between soldiers and citizens are irreconcilable. Suspected men might get a fair trial here at hands of civil authorities, but could not be properly protected from mob violence. Full report about investigation will be made in regular course.

BLOCKSOM, *Major.*

The judge-advocate:

For a matter of information, I would like to know if this is to keep up indefinitely; in other words, if Major Blocksom is not to be called by the defense, then, in order to save time, we will allow it to go in and take up our cross-examination when you are finished.

Counsel for the accused:

That is what we are trying to do—to save time.

The judge-advocate:

If Major Blocksom is to be called as a witness for the defense——

Counsel for the accused:

That is what we are trying to avoid.

Associate counsel for the accused (reads four telegrams on page 54 of the Report of the Brownsville Affray, as follows):

FORT BROWN, TEX., *August 21, 1906.*

CHIEF OF STAFF,
Camp Mabry, Austin Tex.:

In reply to direct inquiry from Military Secretary, Washington, last night recommended colored troops be withdrawn from Brownsville; sooner the better; that differences between soldiers and citizens are irreconcilable. I was directed to remain here until further orders.

BLOCKSOM, *Major.*

BROWNSVILLE, TEX., *August 21, 1906.*

TO CHIEF OF STAFF,
Camp Mabry, Austin, Tex.:

Committee invited by commanding officer to investigate began meetings this afternoon and is given every facility possible. Captain Kelly, prominent citizen; District Attorney Kleiber, twenty-eighth district; Judge Bartlett, county judge, Cameron County, and Judge Welch, twentieth judicial district, form committee.

BLOCKSOM, *Major.*

FORT BROWN, TEX., *August 23, 1906.*

THE MILITARY SECRETARY, UNITED STATES ARMY,
Washington, D. C.:

Battalion Twenty-fifth will probably get away to-night. Warrants have been issued for murder, conspiracy to murder, etc., against 3 sergeants, 3 corporals, 6 privates, and 1 ex-soldier. They will be turned over to commanding officer, Captain Preston, Twenty-sixth Infantry, for safe-keeping until required by district judge. Do not know when, probably early part next month, possibly earlier. Authorities pledge themselves able keep prisoners from violence, but feeling here still high. Request authority to return after battalion leaves.

BLOCKSOM, *Major.*

BROWNSVILLE, TEX., *August 28, 1906.*

CHIEF OF STAFF,
Camp Mabry, Austin, Tex.:

Confidential. My report completed. Shall send soon as typewritten. Can not too strongly urge officers of battalion be impressed with necessity discovering criminals. They did seem to be trying, but were prejudiced by ill feeling shown them here. Such a crime committed by so many men will be great injury to officers' reputation if undiscovered. Almost no evidence against men arrested, though believe majority more or less guilty. Conviction of criminals must come from men of battalion if at all. Many old soldiers know guilty men, and should suffer for concealing act. I shall recommend practical disbandment of three companies if crime not soon discovered.

BLOCKSOM, *Major.*

Q. Now, you stated that Major Penrose gave the committee appointed for that purpose every facility for ascertaining the guilty parties?—A. Yes.

Q. There was no question about that?—A. No question at all.

Q. As a matter of fact, did you go into the history of that down there; do you know what brought about that committee as a result of your investigation?—A. I think it was a spontaneous idea with Major Penrose.

Q. He wanted to make sure that the civil authorities were furnished every facility for discovering who the criminals were?—A. That was my impression.

Q. As a matter of fact, those prisoners were not left with Captain Preston; they were brought on up to San Antonio?—A. They were not. They were brought on up to San Antonio by the battalion and left in the guardhouse here at Sam Houston—all except the ex-soldier.

Q. Allison, as a matter of fact, he was turned over to the civil authorities down there?—A. I think he was, after a while.

Q. Your opinion at that time was, according to this telegram dated August 20—I read: "Although act probably preconcerted, do not think commanding officer could have foreseen it." That was your opinion at that time?—A. That was my opinion at that time.

Q. As a result of your investigation. I want to read now: "Q. How about the commanding officer? Do you think he exercised proper vigilance, considering the circumstances that you have just enumerated?—A. Well, he sent patrols out early in the evening. He knew, of course, that there was a very bad feeling against the soldiers by the people of the town, but his error was one of judgment only." I am reading from the report that is in evidence, First Division of the General Staff, page 275: "I think he did what he thought was proper. Of course, as we look at the thing afterwards, it is evident that a larger guard and more careful vigilance on the part of the commanding officer and the officer of the day would have prevented the occurrence." Tell us if it was your judgment at the time if a very

much larger guard, and if so, how much, should have been placed there by Major Penrose, considering the facts as presented to you?—A. I can not say certainly how large a guard.

Q. As a matter of fact, did not these orders that he gave, you understand, restraining the men from going into town originate from information that reached him at about 5.30 that evening?—A. I think it was about that time.

Q. And that was in relation to the Evans incident?—A. Yes.

Q. And the Evans incident, as reported to you, caused him to issue the order restraining the men from town that night?—A. It did.

Q. Do you want to say that that incident was sufficient to warrant the commanding officer in materially increasing his guard that night—I mean at that time, you understand? Place yourself in the position of the commanding officer at that hour, in the light of after events, in other words.—A. Not that alone. There were some other things connected——

Q. Now, let's know exactly what they are?—A. I am going to give them to you. The commanding officer knew that there was bad feeling on the part of the soldiers toward the town people; at least he should have inferred it.

Q. From what?—A. From the Tate-Newton and Baker-Reid affairs.

Q. Now, let me ask you about the Tate-Newton affair. Wasn't that under investigation officially by the commanding officer at that very minute?—A. It was under suspension.

Q. As a matter of fact, had not he written on Saturday, which was pay day, to the inspector of customs in regard to that matter, to which he had received no reply?—A. I don't know whether he had received any reply. I think the inspector of customs was not there at that time; I am not certain about that.

Q. Therefore it was under process of investigation?—A. Yes, it was; nevertheless it has caused very intense feeling—at least I should judge so.

Q. How was it manifested?—A. It wasn't manifested at all by the men.

Q. Why, then, do you say the commanding officer knew about this—how was it manifested and brought to his attention?—A. He knew it the minute this incident occurred.

Q. Was not he making it a fact of official investigation—isn't that true?—A. That is true.

Q. If it was a matter of official investigation and he was calmly awaiting an answer from the inspector of customs, why should you infer that this had provoked resentment among the men?—A. The mere fact that the soldier was struck on the head with a pistol by the customs inspector.

Q. But you don't mean to say that if one of your soldiers is struck on the head that it is going to produce resentment among the men?—A. I didn't consider that; but when you take that in connection with other things it would cause feeling—for instance, at the saloons they wouldn't allow the men to drink at the bar with white men.

Q. Had there been any complaints made to Major Penrose, or any other positive information brought to his attention on the part of the men, that they resented this seriously?—A. There was not. As I

have stated several times, I simply infer that they must have resented it and that Major Penrose—that the majority of the men must have known of these instances and consequently resented it.

Q. Was it brought to his attention in any way so that he should have increased his guard as a result of that?—A. I am simply discussing the matter of one of good judgment.

Q. But what I want to get at is this: Whether Major Penrose as commanding officer—what he ought to have done there; and in this report here, while you say "that after events would change our method of looking at it," there is a criticism, and I want to know on what you base it—I want you to tell the court.—A. All these incidents together—the fact that the men had been refused drinking at the bars with white people, the Tate-Newton affair, the Baker-Reid affair, the Evans affair—by the process of human nature must have been resented by the men, and Major Penrose must have known it. That is what I mean to imply—not that they told me.

Q. In that there was no outward evidence of it?—A. There was no outward evidence of it.

Q. Then Major Penrose, as a matter of inference from some outward evidence, you think he should have doubled his guard?—A. Yes; and as I said, it was a question of judgment only. I didn't recommend his trial for not doing that.

Q. Now, right in that connection, didn't you ascertain, or did you ascertain that reports were coming to Major Penrose about the conduct of the men in town?—A. I know there was some question of Doctor Combe having talked to Major Penrose some time before pay day and commenting on the good conduct of the men; but whether that information from Doctor Combe or from Major Penrose before this act was committed—well, of course it was before, it must have been before the act was committed—but whether Major Penrose or Doctor Combe told me of it—that is, what I refer to—I don't know. I think Major Penrose did say something to me about [it].

Q. Didn't you discover that these reports came to him from other sources, as a result of your investigation?—A. I don't remember any.

Q. You can't recall any at all?—A. No.

Q. Well, the mayor of the city?—A. Yes; that was Doctor Combe.

Q. So far as the city was concerned officially?—A. I never investigated that, however, I don't think, further than just hearing the statement of somebody; it might have been by Major Penrose. I didn't hear of it until afterwards—long afterwards.

Q. But I say if these isolated events was going to produce one result in your mind—to be inferred as an incident in your mind—and Major Penrose asked the mayor of the town, or was informed by the mayor of the town, that the men's conduct was excellent, would not that tend to counteract the effect?—A. It would to a certain extent.

Q. As far as Major Penrose was concerned before the act?—A. Yes, sir.

Q. So in spite of these events, if it came to him from the highest official of the city that the conduct of the men, as shown by the police, was excellent, Major Penrose would not be compelled to take extraordinary precautions?—A. That would have a tendency to do

that, but whether it was a sufficient tendency to warrant him in not doing it is another thing.

Q. Do you have a distinct recollection of going into that question, whether these reports were true or not—all these reports of good conduct of the men that had been brought to Major Penrose as commanding officer—did you go into this?—A. I never investigated it further than I have already stated.

Q. So your opinion was made up as an inference of these other events and you disregarded that fact?—A. I am not certain whether I disregarded that fact or not; possibly I might have considered it.

Q. Now, there is one thing I want to clear up about this armrack business. You were asked: "Q. It appears that one of the rifle racks was broken open when the noncommissioned officer in charge of quarters went to open it to take out the rifles. Does it appear from positive evidence as to when that was broken open?—A. Sergeant Brawner told me it was broken when they were called to arms, and the suspicious circumstances about it is that that was the only one that was broken open, and this was that same C Company." Now, did you investigate those racks at all carefully?—A. I never looked at them at all.

Q. As a matter of fact, wasn't all of those racks injured that night?—A. I heard so afterwards.

Q. And at least two of them were sent to the shop to be repaired the next day in open daylight. Isn't that true?—A. I don't know. I heard the men testify that four of them came down there; I think it was the post blacksmith. That was long afterwards, however.

Q. Did you ascertain from Major Penrose or the officer in command of that company whether an order had been given to break open that rack or any of them?—A. As I said yesterday, my very strong impression was that both Mr. Grier and Major Penrose told me that Major Penrose had given such an order.

Q. You haven't any doubt now that such an order was given?—A. I have not. That is the reason I did not investigate the racks then, because I considered at that time that these orders would be ample for the breaking of the racks.

Q. What did you mean, then, when you said, "And the suspicious circumstances about it is that that was the only one that was broken open, and this was that same C Company?" If it had been ordered broken open, doesn't that relieve all the suspicion of it, really?—A. At the time I investigated the affair I didn't think so much of the extent of the culpability of C Company, but on thinking of it afterwards, and thinking of the number of men that had been maltreated, as was claimed, and injured, I came to the conclusion that C Company had the largest part in the criminal events.

Q. Now, then, that you have learned that this rack was broken open in compliance with orders, doesn't that remove, I say, what you call suspicious circumstances?—A. No; it doesn't to my mind.

Q. What is there about that armrack being broken open that makes it suspicious?—A. For this reason, that in December, I think, shortly after my arrival in Washington, I was talking with General Garlington about the subject, and he gave me some information that he found out concerning certain testimony which made him believe that all was not as had been told me about the time of the breaking open of these racks.

Q. Well, you investigated this thing, and you spoke of it as a part of your original——A. I accepted Sergeant Brawner's statement of the matter because of these reports of Major Penrose and Mr. Grier—that is, that Penrose had given the order to break them open. Brawner told me that they were broken open during the call to arms, but after this conversation with General Garlington I thought it very possible that they may have been broken before that, or that one at least might have been. That is the only ground that I had for saying that "suspicious circumstances," coupled with the fact that C Company, to my mind, was the most culpable, as far as numbers went.

Q. The point I am trying to get at now, aside from any conversation you have had with General Garlington, is this: If it is shown to be a fact that those racks were broken open in direct obedience to the orders of the commanding officers of that post, or the supreme authority at the post at that time, then, will not that remove your suspicion?—A. It would if I was satisfied the armracks were broken open in accordance with that order.

Q. Did you as a result of your evidence—of the evidence you elicited in your examination at that time—find that either of the armracks—and you were there to examine into all those suspicious circumstances—did you at that time take steps to find out from Major Penrose whether he had given such an order?—A. As I said before, I am positive that he did tell me he did issue such an order, and Lieutenant Grier also.

Q. Now, if Major Penrose and Lieutenant Grier, at that particular time, told you that they had given the order to break open the armracks in explanation of this, what is there suspicious about it?—A. At that time there wasn't any of it, as I said before.

Q. And any suspicions you derived about it was from a conversation with General Garlington?—A. Yes. I may say that this was afterwards verified by affidavits, etc., that was submitted by the Constitution League.

Q. Tell us what you mean?—A. Sergeant Brawner made several affidavits after this first one which he gave to me which stated the same thing as I said he stated to me.

Q. Let's tell the court—we don't want to leave that impression.—A. One of these affidavits said that one of the noncommissioned officers informed him that the commanding officer had given the order to break open the racks, if necessary; he said in another affidavit that he heard the commanding officer give this order himself. These two affidavits were not only not in accord with each other, but they were different from the first affidavit.

Q. But they are not so inconsistent that they deny the fact that the commanding officer gave the order?—A. Oh, no; they never denied that.

Q. So there is no doubt about the commanding officer giving the order there?—A. There is no doubt about that—there wasn't any doubt about it.

Q. What I want to get at is, you have raised a suspicion, now tell the court what there is about breaking that armrack that makes that suspicious. What evidence have you, or otherwise?—A. The fact that these three affidavits of Sergeant Brawner are different.

Q. They only differ in the respect you have told us?—A. That is the principal effect, that I remember of. I haven't read them over in quite a time. And the statement given to me by General Garlington, which I do not care to state, as it was in a private conversation. I simply give it as a probable reason of my opinion at that time before the General Staff.

Q. Do you know where these affidavits of Sergeant Brawner are?—A. I do not. I only know that they were put in that report there.

Q. They are all in this report?—A. Yes. I never saw them at all; I only know them from that report.

Q. Did you ever, in your examination of Sergeant Brawner, examine him on collateral matter to test his recollection as to collaterals or to test whether that was accurate or inaccurate?—A. No; I did not.

Q. Is this conversation with General Garlington based upon something that this court can't have, because we purpose to show that that was broken open in accordance with that order?—A. I would be perfectly willing to give this statement of General Garlington's except that it would state what his opinion was of a certain person which I don't feel privileged to give.

Q. It is based upon General Garlington's opinion of some individual?—A. Yes.

Q. It isn't based upon any evidence?—A. No; it wasn't based on evidence except in this, he examined this individual in his investigation at Fort Reno.

Q. Well, that isn't the only individual that was examined about this thing, was it?—A. No; it was not.

Q. So if this is proved by other individuals, you are not warranted in assuming that General Garlington's opinion of one individual would prove the facts?—A. If it is proved by other individuals that these armracks were broken open by this order, that would remove that suspicion.

Q. There was Major Penrose and Sergeant Brawner and Lieutenant Grier all told you so?—A. Well, Lieutenant Grier and Major Penrose did not know when the rack was broken open.

Q. They told you about the order?—A. Yes; they told me so; that is my recollection.

Q. Did you have any evidence at any time that this rack wasn't broken open after the order was given?—A. I have not; and I have no evidence that it wasn't broken open before. That is where my suspicion came in.

Q. As a matter of fact, didn't the evidence of Brawner show it was broken open after this order?—A. He inferred so, and I think in his two last affidavits he said so.

Q. I am not sure; I didn't read all this; I want to read it now: "Q. Did any testimony show who broke it open? Did any of the men admit having broken it open in order to get their rifles after the alarm sounded?—A. That was the statement of the sergeant, but my impression is that somewhere in Colonel Lovering's evidence there is a statement that some man broke open the rack, but I am not certain about that."—A. I think I was mistaken about that, because I looked that up afterwards and couldn't find anything in Colonel Lovering's report.

Q. You say you didn't find it?—A. I couldn't find it; I don't

think it was in there, although it is possible that it may be in there. I don't know where I got the impression from. I don't believe there is any such evidence in that report.

Q. You were asked, "Do you remember about what time it was that the commanding officer became convinced that his men in the garrison had done this firing?—A. He says, and his letter, I think, says the same thing, that it was when the cartridge clips were brought to him." Do you know when that was?—A. That was in the morning; I think quite late in the morning. I don't remember what time it was. I thought it was about 10 o'clock when Doctor Combe brought him some cartridges at that time. I don't know.

Q. I will read: "Do you remember how soon it was after he took steps to find out whether he could ascertain what rifles had been fired?—A. He didn't take any steps to find that out until daylight. Doctor Combe came back with Captain Lyon when he came back with his company, and told him about the firing having been done in town by the men. I think that was about an hour after the thing occurred."—A. My recollection is that that should have been 1 o'clock instead of 2.

Q. (Continues reading.) "Q. That was shortly after 2 o'clock?—A. Yes; I think so."—A. I believe that was 1 o'clock as it was actually put.

Q. (Continues reading.) "Major Penrose's reason for not having the rifles examined was on account of the darkness, but of course he could have had proper light in the barracks and the rifles examined with some difficulty immediately after the trouble occurred. I never attached much importance to that subject of the rifles—the cleaning of them—because I was convinced that the men who committed the act had made every arrangement about cleaning their guns as quickly as possible after their raid or on their way back. I didn't take any affidavits at all from the people of the town, because I saw a great many of them, and their evidence was so convincing that the act had been committed by colored soldiers that I thought there would never be any question of it, and I don't see now how there can be any possible question of it. I have telegraphed down for some affidavits there. That was on account of the Stewart [matter]. Mr. Stewart had written a letter to the President, and I was directed to give what affidavits I had." The only evidence he had then that his men were guilty of this was what Major Combe told him when he came back there that night?—A. I don't know whether there was anybody with Mayor Combe or not. My impression is that somebody was with him. That was the only circumstance that I remember of.

Q. And he didn't get the convincing proof of it until the next day about 10 o'clock?—A. About 10 o'clock, although when Doctor Combe told him about it he had another roll call at 1 o'clock.

Q. You don't know whether he sent out patrols to find out about these things?—A. I don't know anything about patrols.

Q. But you know he did have his rifles examined at daylight the next morning?—A. Yes. By the way, there is a mistake there in the form of expressing that: That Major Penrose gave that order before daylight. As I remember, the actual inspection was at daylight.

Q. You state you place no stress on that feature of not examining

the rifles that night. Why not?—A. Because it would take the men only a few minutes to clean their rifles. My idea was that the men, when they went out, had their thongs and brushes and oiled rags all ready to clean their rifles, and I believe I have been informed—I have talked with officers on the subject of these new rifles—and some of them have told me they could be cleaned in a very few minutes. That, I believe, should be demonstrated before the court.

Q. Yes; we hope to. As a matter of fact, did you ever inspect a gun by lamplight of any kind, or artificial light of any kind?—A. I suppose probably I have years ago; but I don't remember that I have ever inspected a rifle, or, anyway, the probabilities are if I ever cleaned anything it was a shotgun.

Q. Can you tell, as a matter of fact, whether a shotgun is clean or dirty by an artificial light, such as a lantern or ordinary lamp?—A. I think you could tell pretty well by a good lamp.

Q. Did you ever try it?—A. I never did.

Q. Would you be willing to go on record as saying it can be done?—A. No.

Q. You don't know, as a matter of fact, how long it takes to remove all evidences of this high nitropowder, do you, so that it can not be detected at daylight? You haven't tried that?—A. No; I haven't tried that personally.

Q. And you don't know whether a gun can be inspected by a lantern or a lamp at night and the presence of that powder detected, do you?—A. No; I do not. I only know that officers who ought to know have told me that a gun can be cleaned in a very few minutes.

Q. I am talking about inspecting them. I want to know whether the presence of the residue of a few shots of this nitroglycerine powder in one of our modern Springfield rifles, of your own knowledge, could be detected by lamplight or lantern light?—A. I don't know anything about it of my own knowledge.

Q. Lets ascertain what facilities they had there at Brownsville—they had lanterns did they not?—A. Yes.

Q. And barrack lamps?—A. Yes.

Q. As a matter of fact, your evidence showed that there were no lights in the barracks, isn't that so?—A. Yes.

Q. And that in the frame of mind in which the officers—in which they claimed the men were—that was the last thing they would do, to light barrack lamps?—A. During the progress of the shooting, yes; and immediately afterwards.

Q. But then you say here, "But, of course, he could have had proper light in the barracks, and the rifles examined with some difficulty immediately after the trouble occurred." Now, as a matter of fact, you don't attach much importance to that examination by a lamp any time before reveille, do you?—A. I don't know what the effect on a rifle is after it has been fired ten or a dozen times, if it was clean before, so I can't say.

Q. And you don't know, as a matter of fact, of your own knowledge, whether you could determine that by lamplight or not?—A. I do not—that is, I mean thoroughly. They could have examined them, as I said, under difficulty, but whether the result would have been positive I can not say.

Q. So that that remark really implies nothing serious as a criti-

cism?—A. No; it does not—that is, to my mind at the present time, and very probably at the time I gave it.

Q. What did you mean by this? "Q. Does it appear that any orders were given by either the commanding officer or the officer of the day providing for contingencies that might arise after the last patrol was made?—A. There was no order given at all."—A. There were in reality four patrols, I think, went out that evening, three patrols in charge of noncommissioned officers and one by Captain Macklin himself, and I inferred that there were no others because I was positive that Major Penrose or Captain Macklin, or both of them, would have told me if there had been.

Q. Then that is rather negative testimony, isn't it?—A. It is negative, yes.

Q. I notice you give some distances?—A. Yes, sir. Those distances are wrong and they are not what I stated them to be. I did say that the distances between the barrack wall and the men's quarters was about 25 yards.

Q. The barrack wall and the men's quarters?—A. Yes; about 25 yards. The distance between the men's quarters and the officers' quarters is 175 yards. I think that is just reversed.

Q. So it would be 25 and 75 yards?—A. Twenty-five and 175; 175 yards between the officers' and men's quarters.

Q. Did you measure that afterwards?—A. No; I did not. I only measured the distance between the wall and the men's quarters.

Q. That is relatively correct there is it now?—A. I think relatively correct there. The distance between the officers' quarters and the men's quarters would be about seven times the distance.

Q. As a matter of fact, the distance as you gave it, from the wall to the barracks was 28 yards, as I recollect it?—A. That is from the wall to the porch is 28 yards.

Q. That is 84 feet?—A. Yes.

Q. Here is one thing I want to clear up, "Were any steps taken to identify this man by the commanding officer when it was reported to him?" That refers to the alleged assailant of Mrs. Evans. Your answer was, "There was no effort made to identify the man at all. The only thing that he did really was to send that patrol along to protect Mrs. Evans from anything further. By the way, the Evans people left that locality after that and went away down in town," and so on. As a matter of fact wasn't the information so indefinite that they couldn't make any effort?—A. I didn't consider the information indefinite at all. Mrs. Evans told me she couldn't identify the man.

Q. She told you she couldn't?—A. She only knew he was a tall dark-colored soldier; that it was dark or very nearly dark, I think she said it was dark, and that she was much frightened and she wouldn't be able to identify him; there would be no necessity for any steps, because the man couldn't be identified by her.

Q. The commanding officer couldn't have done anything?—A. No; because she couldn't have identified him.

Q. Now, wasn't there another good reason—as a matter of fact, was there any time available for Major Penrose to have investigated this matter between the time that it came to him, 5.30 in the afternoon, and the following morning?—A. There was practically no time.

The judge-advocate:

May it please the court, we have allowed a great many leading questions upon this new matter brought up by the defense, hoping that it would not be necessary to interpose an objection and have the court cleared a number of times, but apparently the defense has been encouraged by our quiescence and the questions are becoming more and more leading upon matter which was introduced by itself, and we object especially to the last question and to the character and class of questions which are now being asked upon this new matter.

Counsel for the accused:

All this matter was gone into in the original report of the gentleman. There is no question about that. There is nothing new about it; no possible stretch of the imagination could make that new matter. The Evans incident has been thrashed over time and time again from this report.

The judge-advocate:

Counsel was reading from page 277 from matter that was introduced by the defense itself this afternoon.

Counsel for the accused:

We did introduce it in a new form and we can approach it from any point of the compass if we want to.

The accused, his counsel, the judge-advocates, the witness, and the reporter then withdrew and the court was closed, and, on being opened, the presiding officer announced, in their presence, as follows:

The court desires information from the record as to whether this matter was brought out by the direct examination.

(The record of the direct examination was then presented to the court.)

Counsel for the accused:

May it please the court, we just simply want to say that if you do not find it in a direct question, you will find it in his original report introduced by the judge-advocate.

The judge-advocate:

In that connection I would like to have the court understand that the questioning was upon the report introduced this afternoon—that is, it was before the accused party; I was following it.

A member of the court:

How was that?

The judge-advocate:

I stated for the information of the court that the question at the time the objection was made was upon the report introduced either this morning or this afternoon by the defense. It was at page 277 in this record, which is not all before the court, however—that is to say, I would not hand up that book because there are other things in the book that are not a matter of evidence.

Counsel for the accused:

I want to ask, for my own information, what the objection is. I would like to have the record read.

(The presiding officer here requested the reporter to read the record from the last question, which was done.)

The accused, his counsel, the judge-advocates, the witness, and the

reporter then withdrew and the court was closed, and, on being opened, the presiding officer announced, in their presence, as follows:

I am instructed by the court to announce the decision that the objection is not sustained. The question will be answered.

Counsel for the accused:

The question has already been answered.

(The reporter here read the answer to the last preceding question, as follows: "A. There was practically no time.")

Q. Taking up the question of roll calls: Did you investigate that when you were out there?—A. I investigated it to the extent that I have already stated.

Q. Now, did you interview Lieutenant Lawrason on that subject as to whether there had been a roll call in his company?—A. I don't think I did. My statements there to the First Division of the General Staff were made, I think, from my reading of the Lovering report, and they are not exactly correct—all those statements there—at least that I don't think I especially excepted to B Company.

Q. I will read just what you did say, so you can correct whatever you desire: "With regard to the roll calls, there was practically none in the C Company at all. There was no officer with C Company that night, the officer of the day being Captain Macklin. B Company only had one officer, Lieutenant Lawrason, who was a very young man and very inexperienced. Roll call was not accurate in that company at all."—A. I don't recollect now why I made that statement. I don't think, from my recollection of the matter now, B Company was any more inaccurate than the other. My idea was that none of them were accurate.

Q. As a matter of fact, wasn't B Company's call more in the regular form than any of them?—A. From the testimony in the Lovering investigation B Company apparently had the nearest semblance to a real roll call, and when I stated that there was no officer with C Company I meant no officer belonging to the company. Mr. Grier was ordered to take command of it by Major Penrose.

Q. That developed in your examination originally, did it not?—A. Yes, sir.

Q. Isn't it a fact, as you stated in the General Staff report, that some sort of a sweating process should have been necessary with those men to have gotten the facts, in your best opinion, at that time?—A. I think I did intimate such toward the end of that.

Q. And you disavowed any of the criticism of the Department?—A. Yes.

Q. But you were careful to state—I will read it if you want it.—A. I wish you would.

Q. (Reading.) "The present methods of discipline, especially of negro troops, are very different from what they were fifteen or twenty years ago. In those days the officers and noncommissioned officers were much more severe in their discipline. They kept the men down, and when they wanted to find out anything from the men they used strenuous efforts, something like the sweating process of the police of the present day. It makes a great difference, especially with colored troops. I am not criticising the methods of the War Department."—A. I didn't refer to physical punishment when I said that "sweating

process" at all; I referred more to what I said yesterday about putting them in solitary confinement and persuading them in one way or another.

Q. As a matter of fact, do you know anything about the sweating process?—A. I don't know what it is.

Q. I do, and it is physical punishment so far as the police are concerned.—A. It is?

Q. Yes, sir. As a matter of fact, wasn't this examination of you by the General Staff made with a view of determining whether or not they would bring these officers to trial—you and the other officers?—A. That was one of the examinations which they made for that purpose.

Q. That was a part and parcel of their determination?—A. Yes.

Q. And this was in December?—A. This was December 8.

Q. And this examination, etc., was practically the basis of the charges that resulted against these two officers, wasn't it?—A. Not altogether; I think there were some similar instances brought before this to the attention of the General Staff which were taken as models.

Q. But I say the facts brought out by this investigation was the basis of the charges?—A. I think they were.

Q. That is what you understood?—A. I understood so.

The judge-advocate:

Without meaning to break in at all on the cross-examination, I was informed a moment ago by the stenographer that he had more than enough work to keep him busy during the night, and while I am perfectly willing to go on, I am simply making that statement. He has an unusual amount of material this afternoon.

Counsel for the accused:

I think I can finish this line of examination in a few moments. The stenographer won't have to work to-morrow afternoon, as I understand it.

The court:

Very well, you may proceed.

Q. I want to return to the question of lack of judgment that you attribute to the commanding officer. You did state that it wasn't of such a nature as to warrant the idea of inattention or neglect. I will read what you do say.—A. That was what I said to the General Staff.

Q. That was what your opinion was?—A. Yes; that was what my opinion was.

Q. I want to clear up this question of keys to the gun racks. Did you go into the question of where those keys were kept in each company in your investigation, do you recall?—A. I only know that one of them was kept by the noncommissioned officer—that is, one for each rack was kept by the noncommissioned officer—in charge of quarters. I don't know whether I knew there was a duplicate or not, but I think I learned that since—that there was a duplicate to each lock.

Q. Do you know what the custom is in that regiment as to the keeping of the keys to the gun racks, or any regiment?—A. I judge they were kept in the hands of the noncommissioned officer in charge of quarters all the time he was on duty.

Q. That is the custom?—A. That is the custom.

Q. Do you know of any fixed custom about the keeping of the

duplicate key to each lock?—A. I think that would naturally be kept in the possession of the first sergeant; it ought to be, at least.

Q. So that they would both, then, practically be under the control of the noncommissioned officers of the company?—A. Noncommissioned officers. The commissioned officers don't usually keep any keys.

Q. You don't lay any stress on the idea that there was culpability attached because these two keys, the original and the duplicate, which were furnished for each lock, were in the hands of the noncommissioned officers of the company?—A. Certainly not; they are always that way.

Q. That is the point I wanted to clear up. In criticising the officers for lack of attention to duty that night, did you have anything specifically brought to your attention that would warrant a severe criticism of them?—A. No.

Q. There was nothing specific in the way of neglect?—A. I think I stated fully my idea there in that interview.

Q. Well, you intimated in this they didn't take enough precautions in their own companies?—A. Yes, sir.

Q. But there was no specific negligence that you can attribute to these men?—A. No; there was not. As I said, they may have been to a more or less extent not guilty, but they had a lack of judgment; but it was perfectly natural that they should have had more or less. Some men would have taken more precautions than they did, but I don't believe they were at all criminally negligent.

Q. Now, one more subject, the question of ammunition. "Q. Was there any attempt made to trace the ammunition that may have been fired to find out where it came from?—A. There was no attempt at all to do that. Q. Was the ammunition issued and in the hands of the men?—A. Yes. I don't know just how much they had; I think just enough for guard purposes. It is very easy for men to get ammunition in any company at any time." How much examination or investigation of that did you make in each company that you can recall now?—A. I didn't make any. What I meant by that answer there was the surplus of ammunition which would have been necessary for them to expend in this raid, providing they were guilty, before the event occurred. There was no report to me that any such verification was made or any attempt to find out if those men had in their possession——

Q. Did you investigate any of those officers in regard to that?—A. I did not. There was no report made to me to that effect.

Q. Don't you know, as a matter of fact, that there was an investigation and check up of this the next day?—A. There was a check up of what was used, I believe.

Q. Wasn't there a check up of the other; did you investigate it carefully?—A. You mean the surplus they had on hand?

Q. No; the ammunition as it says there. I will read: "Was there any attempt made to trace the ammunition that may have been fired to find out where it came from?—A. There was no attempt at all to do that."—A. I understand by that that the ammunition that had been fired was fired during this raid.

Q. Of course; but there was no time to find out where it was. Now, wasn't there a check up of the ammunition there that night?—

A. There was a check up afterwards of what they were accountable for; I knew that. What I referred to was, I regarded this ammunition that they fired as being surplus, which I have always found to be customary in the service for men to have; which they pick up at target practice and in various ways.

Q. Now, let's go into that a little more in detail. As a matter of fact, isn't there an order requiring officers to take up on their return this surplus ammunition?—A. There certainly is, but the men hide it out; they always do it.

Q. Did you make a personal examination of these officers and the conditions there to find out whether they had made an honest effort to ascertain whether this ammunition had been secured from their supplies?—A. No; I made no effort, because I was convinced they would have told me they made such an effort before this thing occurred.

Q. Are you sure they didn't tell you that they hadn't done this?—A. No.

Q. Did you raise the question?—A. No. I was confident they would have told me if such a thing was the case.

Q. You were told that the thing was gone into the next morning?—A. No; I have no recollection of it.

Q. That there was an inspection made on the 14th?—A. Oh, yes; after the thing occurred; but there was no report made to me that there was an inspection of the ammunition before the thing occurred, that there was no ammunition in the hands of the men, in their personal possession.

Q. But you didn't go into it?—A. No; because it seemed to me that the officers certainly would have told me if they had made any inspection recently.

Q. Well, did you go in to ascertain whether this ammunition was reported to be in its original packages, etc., whether they had inspected the men previous to that to see whether they had any surplus ammunition or not? You didn't go into that?—A. I did not.

Q. Well, you go on and say, "I think it would have been quite easy for them"—that is, to get this ammunition. "As a rule every company has a surplus of ammunition which is not carried on the returns. They get this surplus in different ways—target practice and others. It ought to be kept in the storeroom. Nearly always I have found that men have more than their allowance. There was, however, no attempt made to verify that." By that last remark do you mean you made no attempt or the officers made no attempt?—A. I meant exactly what I did in the other statement—that is, there was no attempt made to verify what they had.

Q. On the part of the officers?—A. Yes. That is, for the same reason I gave above, that they didn't report to me of any such surplus.

Q. And you didn't ask about it?—A. I didn't ask about it.

Q. You don't know, as a matter of fact, whether they did or did not?—A. Of my own knowledge, no.

The court then, at 4.50 o'clock p. m., adjourned to meet at 10 o'clock March 2, 1907.

CHAS. E. HAY, Jr.,
Captain, Acting Judge-Advocate, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., March 2, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocates. The accused, his counsels, and the reporter were also present.

The reading of the proceedings of March 1 was dispensed with.

Maj. A. P. BLOCKSOM, Inspector-General's Department, was reminded that he was still under oath.

CROSS-EXAMINATION CONTINUED.

Remarks by witness:

I would like to correct what may be a false impression the court has of my evidence given yesterday and the day before. I am not an advocate of torture for the detection of crime, and I never knew until yesterday afternoon that the sweating processes of the police sometimes include torture.

By president of the court:

I think that was made clear by your testimony yesterday afternoon.

Q. I think you said that you and Major Penrose were in frequent conversation every day while you were there and he was there at Fort Brown.—A. Yes.

Q. Do you remember any conversation in which you advised Major Penrose that he ought to have placed these men in the guardhouse?—A. I don't remember whether I did or not.

Q. Didn't you a few days after you got there have substantially this conversation with Major Penrose: "Penrose, I think you should have placed Reid, Jackson, Howard, and Tamayo in the guardhouse," to which Penrose replied substantially, "I differ with you; I have taken the statements of these men and I believe what they tell me." Did you have some such conversation?—A. All I can say, it is possible and probable. I can not recall a great many conversations I had with Major Penrose. This matter happened six months ago; I took no notes. The time was a strenuous one; there was a great deal of danger all the time of conflict between the soldiers and the citizens, and I was engaged as a peacemaker, more or less. I did not have time to take notes. This investigation is showing, of course, a want of memory on my part, and it may show that some of my conclusions, or that I have not given sufficient reason for some of my conclusions; but at the time I had an adequate reason for every conclusion I gave. My conclusions, however, are not matters of evidence; they can be proved by other witnesses—that is, what I said can be proved by other witnesses, whether or not they are facts.

Q. But you reported, I think the next day after your arrival, that the troops were well in hand.—A. I did. I think it was the second day; I don't know.

Q. It was read in evidence yesterday; that's what I refer to; either the 19th or 20th.—A. I am not certain of the date. I would like to have it shown by the report.

Q. You considered it a very strenuous time?—A. I did.

Q. And any mistake on the part of Major Penrose might have caused trouble?—A. They might. Any irresponsible person between

the line of the barracks and the town firing a shot might have caused a conflict at any time which would have resulted in the death of a great many people.

Q. So you consider Major Penrose, certainly during the time you were there, did everything that could be done or could be expected of a man in his position?—A. He did.

Q. That date was August 19, Major Blocksom, the day after you arrived, and the exact language I will have read.

(Associate counsel read: "Arrived last night; troops under proper control, although town people very much excited and people all carrying arms.")

A. Yes; that's what I referred to.

Q. In this connection I would like to know what orders, if any, you recall Major Penrose had given to his men on outpost duty about firing, for instance?—A. He had given them strict orders not to fire unless absolutely necessary. I don't remember what his wording was.

Q. Wasn't it without the positive order of a commissioned officer? Wasn't that the order?—A. I don't remember; I think it was.

Q. But every precaution that a prudent commanding officer should have taken to prevent trouble you think was taken?—A. Yes. Or possibly he might have included in this order that they should not fire except in self-defense. My remembrance is he gave thorough orders on that subject.

Q. I want to take up now these shots, and I will try to take them up in the order in which you testified to them on direct examination. First, as to the Yturria house: How many bullet holes did you examine in that house?—A. I examined what was said to be the marks of four bullets.

Q. Four bullets? Where were they; where did they strike the house?—A. One of them struck, first, the lower side of this lintel which I described the other day. It went through the wall of the house on the side next the barracks a little lower than the line of sight through the groove indicated, and the hole itself in the wall showed a little enlargement, as I remember, indicating that it had tumbled slightly, to my mind.

Q. Will you go on and describe the course of that particular bullet? I would like to take them up in order. What became of that?—A. In the August examination I didn't sight from the outside of the porch through the groove, I don't think, to the point where this bullet entered the wall, but I did in December.

Q. What became of it?—A. It went through the wall; it went through the kitchen door and, I think, lodged in the covering of a well out in the yard. At least Mr. Garza showed me this hole in the well where he said he had dug a bullet out, and I think it was nearly in line, although I did not investigate that.

Q. Then what material must it have gone through from the time it struck this lintel, which was either a 4 or 6 inch wide lintel——A. I am almost positive it was a 4 by 6, the 6 inches being vertical.

Q. So it penetrated very near 4 inches?—A. It penetrated 4 inches, I think.

Q. And that was pine?—A. I don't know what it was, the board was painted.

Q. What other material did it go through?—A. Through this wall.

Q. And what was that wall composed of?—A. The outside of it was a frame house, and I don't remember what the inside was, I think it was wood.

Q. No plaster?—A. I don't remember whether there was plaster or not; I don't know whether the wall was solid or not; don't know how thick it was.

Q. What did it go through next?—A. Went through the door, as I remember, the door of the kitchen—that is, the door opening on the yard on the other side from the barracks.

Q. And that door was made of what?—A. I don't remember.

Q. The door was on the further side of the house?—A. Yes.

Q. And then it went into?—A. A cistern.

Q. How much lower was the lintel than the point where it entered the house proper?—A. Possibly 2 or 3 inches; not quite so much, possibly.

Q. How much lower than this opening, if any, was it where it struck the kitchen door?—A. Probably a foot or so lower; I am not positive.

Q. That's your best recollection?—A. Yes.

Q. And then how far into this well did it go?—A. I don't remember that. I know it was a very small distance, not over one-half inch or so.

Q. Did you see that bullet yourself?—A. It was given to me by Mr. Garza.

Q. And that was what kind?—A. A Springfield rifle bullet.

Q. You are positive of that yourself?—A. I am. At least it is exactly like the Springfield rifle bullets I have seen and known to be such.

Q. Tell the court just what it looked like and by what means you determined it was a Springfield rifle bullet.—A. It was the same length as the specimens I know to be Springfield rifle bullets; it was the same color; it was the same shape. It had an indentation on the side of the nose, indicating that it had struck some hard substance on its road, although the jacket was not broken.

Q. The jacket was not broken at all?—A. No.

Q. Any other evidences by which you determined it was a Springfield rifle bullet?—A. It was the same all through as the Springfield rifle bullets which I have since examined and know to be Springfield bullets.

Q. We want to know what the marks are.—A. There are practically no marks on the bullet itself, except in the rear of the bullet, where the casing is—I don't know how it is turned in, fits in—there is a slight hole there, a small hole, rather. These bullets were exactly like it, although I don't remember——

Q. What do you mean by "these bullets?"—A. I mean this bullet.

Q. Exactly like what?—A. The regular Springfield rifle bullet.

Q. There were no changes on that when you found it?—A. Yes; there were changes on it. There were marks on it of four lands of the rifle from which it was fired.

Q. Therefore it must have been fired from what?—A. From a Springfield rifle, as I understood afterwards; I did not know at the time.

Q. The Springfield rifle is the only one that has four lands?—A. From the testimony of experts on the subject I believe that the Springfield rifle is the only rifle in this country which has four lands, the military rifle.

Q. As a matter of fact, does not the Krag have four lands and four grooves the same as the Springfield?—A. The Krag has, but the bullet is different. What I should have said is the military rifle has four lands.

Q. What was there about that bullet to enable you to determine it had not been fired from a Krag rifle?—A. I found that out afterwards.

Q. We want to know what it was.—A. That the Springfield rifle cartridge will not go into the Krag rifle.

Q. And this you are certain could not have been any other bullet than the Springfield bullet?—A. I am certain of it.

Q. I want to know why. I want to get at that proposition.—A. I told you why. Principally its shape, the marks on it——

Q. Hasn't it the same caliber as the Krag?—A. The same caliber.

Q. And the same length?—A. The same length.

Q. And the Krag also has four lands, and the Springfield four lands?—A. That's very true, but the nose of the Krag is different from the nose of the Springfield.

Q. Let me ask you a question right there. You say the nose of the Krag is different from the nose of the Springfield, but this bullet was mashed at the nose——A. On only one side; but the configuration of the nose was very plainly indicated from the other side. The point was not injured.

Q. Then I understand you to say that this bullet which had gone through one-half or more of the 4-inch lintel, through the walls of the house on one side and the door on the other, and buried itself about a foot, was it, in the cistern——A. No; an inch.

Q. An inch or less in the cistern; was not mashed beyond recognition at all, so you could identify it as a Springfield bullet?—A. I do.

Q. That's what I want to get at. And you are positive from the location of those lands that that must have been fired from a Springfield rifle?—A. And from the fact that the cartridge will not go in the Krag rifle.

Q. That particular——A. This Springfield cartridge which contains that bullet.

Q. But there was no means of identifying that, of testing that with that actual bullet you found?—A. No; I found that out afterwards.

Q. I mean at no time. There was no means at any time of testing that particular bullet which you found, as to whether it would go into the Krag rifle, was there? It must have been mashed somewhat out of shape.—A. It is mashed only on that one place, less than half the nose; the bullet is almost perfect in every other respect.

Q. But you are positive from this examination, what you have testified, that this was fired from a Springfield rifle?—A. Yes; from the testimony I heard afterwards, I am absolutely positive that the bullet was a Springfield rifle bullet; that is, if the specimens here and others I have seen are Springfield bullets.

Q. Now, we will take up the next one you examined.—A. The

next bullet entered the wall—by the way, this bullet first struck the lintel, went through the lintel.

Q. The same lintel?—A. The same lintel, about 3 or 4 feet east of the first mark which I have described. Entered the wall somewhat higher than the other bullet and went through the wall, and I think through the wall of the kitchen on the other side. I did not examine this bullet hole the last time I was at Brownsville. That is this hole through the wall on the farther side, but I did the first time. I don't recollect how it looked; however, I got under, I think, the line of the bullet holes inside the kitchen and estimated that this line would point almost to the same spot on the porch.

Q. I don't want to go into these directions until afterwards. What I want to get at is the material it struck and went through and the condition of the bullets. If I understand you correctly, this particular one instead of striking on the bottom of the lintel went through it?—A. Yes; went through it.

Q. Penetrated 4 inches of pine?—A. Yes; whatever it was—I don't know what it was.

Q. Then went through what?—A. The wall.

Q. Was that above or below where it struck the lintel?—A. My impression is it was below.

Q. That also went down?—A. Yes. That is, indicating to my mind at the time that the shot ranged down; not that it tumbled in that case, I don't remember that it did.

Q. In that particular case it ranged down?—A. Yes.

Q. And then did it continue on its downward course?—A. I don't remember.

Q. But you are quite positive in your recollection that it went through the other side of the house?—A. Yes.

Q. Did you ever find that bullet?—A. No.

Q. Where did the next strike?—A. Struck a little east of where the second bullet struck. Went into the wall and through part of the partition between the dining room and kitchen. It also struck a picture frame which was hanging on the wall and broke that up to a certain extent, and then lodged in the dining-room door on the other side, or opposite side of the wall.

Q. Then it went through the outside and inside coating of the wall, and what else?—A. Through the partition.

Q. Was that partition of wood or plaster?—A. The outside of it was wood, as I remember seeing a splinter of it.

Q. Where did you see this splinter?—A. About a foot or a foot and a half from the outside wall, where it came out of the partition.

Q. The splinter was a foot or a foot and a half from the wall; you mean on the floor?—A. No; the hole where the bullet came out was splintered.

Q. Was that on the inside or the outside wall?—A. That was inside the dining room.

Q. Was it in the partition wall or in the wall on the outside of the house?—A. In the partition wall.

Q. Both of those must have been of wood—that is, the inner partition?—A. The outside of the partition was of wood; what the inside was I don't know. I did not measure the thickness or what composed its interior.

Q. That makes two partition walls it went through—that is, the outside wall and the inner partition.—A. The outside wall is not a partition wall; it went through the outside wall and part of this partition.

Q. Which side of the inner wall or partition wall was it that it struck this picture; did it strike that before it struck the second wall, or partition wall, that's what I want to get at?—A. It entered the wall on the outside, and the next place where it showed was the inside of the dining room in this hole in the partition, about a foot and a half from the wall. (Witness indicated with two books that it went through the outside wall opposite the point where the inside partition wall butts against it, ranged diagonally through this partition wall, and then struck the dining room door.)

Q. What became of it after it struck the dining room door?—A. It lodged there.

Q. Did you see that bullet?—A. I did.

Q. What shape was that in?—A. That bullet was broken up more or less. It was blackened slightly, from what cause I don't know. The nose of it was shattered to a slight extent. There were the marks of four lands on it just as there were on the other bullet.

Q. Did it still retain its form at any part?—A. Yes; its form was nearly as it was originally, with the exception that at the nose it seemed to be broken—I don't know as I can describe it exactly, but it was as if the bullet had been pressed in some way on the side, not from the front. As if the bullet had struck something on the side which had caused the rupture.

Q. Wasn't the steel jacket peeled off at all?—A. Not that I remember.

Q. Your best recollection is it was not?—A. Was not.

Q. Was not mashed up as the head at all, so as to leave a changed appearance and show a number of different metals?—A. As I remember these ruptures were longitudinal, indicating that it had—that is, the nose was not pressed in at all.

Q. Were there any cracks in it except the marks of the lands?—A. I think there were none except those I have described right at the nose.

Q. This bullet had not gone through the lintel you speak of outside?—A. No; this bullet struck the wall first.

Q. Was there any difference between the size of the hole where this struck the wall and the size of the hole where the other struck the outside wall?—A. I don't remember.

Q. What's your best recollection about that?—A. My remembrance is that they were both about the same size.

Q. Is your remembrance pretty accurate about that?—A. Fairly so.

Q. If there was a material difference in the size you would have noted it?—A. I think so. I think both those bullet holes were small where they entered the wall.

Q. Did you notice any difference between the hole of exit and the hole of entrance on the lintel at all in either of the two that you say went into the lintel?—A. My recollection is that the second one, which went clear through the lintel, the hole of exit was the same size as the hole of entrance. It may have been a little more splintered, I am not certain.

Q. Were there any splinters; if so, can you give us any idea what the appearance was?—A. My recollection is there was a slight fringe around the hole of exit, but I can not be positive of that.

Q. In both cases?—A. No; in the first case where the bullet grazed the lower edge of the lintel, where it left the lintel it only grazed it, and I don't remember whether there were any splinters there or not; I think not.

Q. That's the bullet that went down?—A. Yes; that's the bullet that went down.

Q. How far from the inner edge of the lintel was it where it left it?—A. What's that?

Q. You said it just grazed it?—A. Yes.

Q. Did it cut out some of the material on the inner edge of the——A. I am not certain whether it cut out any or not; I think it did; a slight portion. But it may simply have had the mark of indentation, indicating that the bullet had just touched it.

Q. How much is your best recollection that it cut out of the outer edge of that lintel?—A. I should say something like a semicircle of the bullet, possibly a little more or less. I should think it probably cut out more, possibly a quarter of an inch.

Q. Was there any difference between the holes in the partition inside, the inside partitions, and the holes where it entered the door as to size from those on the outside?—A. My recollection is that where the bullets left the inside portion of the outside wall that they were splintered and enlarged to some extent, although I can not say positively. I did not examine these bullet holes carefully the last time I was at Brownsville, and it has been six months since I examined them carefully.

Q. I forgot to bring out—going back to that bullet that went through the outer partition only, did not strike the lintel, struck the inner partition—didn't you say it struck a picture?—A. It struck a picture hanging on the wall in the dining room.

Q. Struck it diagonally?—A. It did, to the best of my recollection. I think the picture was broken; the glass was broken.

Q. And went through whatever there was at the back of the picture?—A. Yes.

Q. And went into the door?—A. Yes.

Q. How far above or below where it came out of the partition was it where it struck the door on the other side?—A. It was between, I should say, between three and four feet—ranged down.

Q. Was there any other bullet holes you examined?—A. There was another bullet hole pointed out to me. I don't remember how that looked at all, but it left the ceiling of the dining room somewhere near the center.

Q. It left the ceiling?—A. Ceiling of the dining room.

Q. What was that ceiling composed of?—A. As I remember, it was wood, but I am not positive of that.

Q. That's your recollection now?—A. That's my recollection.

Q. Do you have any distinct impression of the nature of the hole where it came out of that wood?—A. I have no impression at all; it was pointed out to me.

Q. Do you know where the bullet came from?—A. I only know what I was told, that it came from the roof.

Q. Did you examine that hole?—A. No; I didn't. I will say that when I went back the second time, in December, Mr. Garza pointed out to me two holes in the water tank which is in the yard between the house and the barracks, between the dining room and the barracks, and these two holes at the time I thought probably were made by the bullet which entered the roof above the dining room.

Q. Both of them?—A. Both of them. The line between the point of entrance and the point of exit, I estimated, must have come about the same place as the others came from, although I did not sight under them to see; that is, to get the vertical direction. But I did not see those bullet marks at all the first time I was in Brownsville.

Q. Do you recognize this picture (handing witness photograph already in evidence, Exhibit —)?—A. Yturria house, No. 27. Yes; I recognize that picture.

Q. Is that framework there the mill or tank you speak of?—A. It is the tank itself, inside that framework.

Q. These bullet holes—in what part of that structure did you see them?—A. The point of entrance was just about there.

Q. In the tank itself?—A. Yes; in the tank itself. The point of exit was on the other side, not visible from the front here, and my remembrance is that it was a little lower than the point of entrance.

Q. And you think that is the bullet that went on through the house, through the roof, and came down through the ceiling of the dining room?—A. I do.

Q. Where did the other one strike? You said there were two bullet holes. Show us there.—A. They were the holes made by the same bullet.

Q. Only one bullet?—A. Yes.

Q. There were none in the framework?—A. There was also a mark in the framework where the bullet had grazed the side of this framework, but that was the same bullet.

Q. You think that was the same bullet that went through?—A. Yes.

Q. How much material did it go through in the framework?—A. It simply grazed or touched the edge of the vertical piece of timber.

Q. How much penetration of material was there in the tank? Did you investigate that at all?—A. No; I did not, but I know about what it was. I should say that it went through 5 or 6 feet, possibly not so much, of the tank. That is, after it got in the tank it went through 5 or 6 feet before it went out; possibly not so much.

Q. I want to get at the penetration of hard substance—that is, wood—inside the tank.—A. I don't know anything about that.

Q. Was that bullet found at all?—A. I don't know whether it was or not. I don't remember having seen it or hearing anything said about it.

Q. Now, how high was the lintel above the porch?—A. I should say that the railing—I can only estimate the distance from what I did.

Q. Well, let's have that.—A. The railing was 3 feet, I should say, above the floor of the porch. I climbed up on this railing and looked along this groove. I had to stoop slightly to do it.

Q. You had to stoop down to look through the groove?—A. Yes; but very slightly, as I remember. I should say the distance was

from the floor, on that account, would be 3 feet of the railing; the distance from the railing to my eye where I looked through the groove probably 4 feet, 9 inches. That would make it about 7 feet, 9 inches, from the floor.

Q. How far away was the barracks at the point where you located the firing stand, from this bullet hole?—A. The distance to the lintel from the barrack wall, I should say, was about 80 feet or more; possibly more than that; then there would be the distance from the barrack wall to the barracks, which was about 90 feet. About 175 feet, I should say.

Q. Did this bullet go directly or perpendicularly through this lintel, or what direction did it have when it struck the lintel?—A. You mean the one that grazed the lower edge?

Q. Yes; that's the one I am talking about.—A. It evidently came from a point higher than where it entered.

Q. Here's your lintel, see. I want to know whether it went perpendicularly through that way or whether it struck it at an angle.—A. It struck it, as I remember—well, I don't remember distinctly whether it struck it at an angle or not, but I think it did at a slight angle.

Q. Then, if that is the case, it must have passed through more than 4 inches of lintel.—A. Well, very little more, because the angle was slight, if there was an angle at all. I think there was a slight one.

Q. It maintained that direction when going into the house?—A. Yes.

Q. How much was the angle when it struck the house? You mean very acute or very obtuse?—A. Almost a right angle—that is, the direction of the groove with the longitudinal direction of the lintel.

Q. What was the shape of this hole itself as it passed through this wood? I am talking now of the same bullet that did not penetrate. What was the condition of it; what was the appearance? Describe it as accurately as you can.—A. It was semicircular for quite a way, gradually diminishing in size and convexity.

Q. What was the appearance of the wood?—A. The appearance of the wood was somewhat rough, to the best of my recollection.

Q. Was its entire length filled with small particles of wood that had been raised by the bullet in its passage through, or was it a clean-cut hole, as though chiseled out?—A. My recollection is it was not perfectly clean cut, but how much of a roughness I can't say.

Q. You sighted through that?—A. I sighted through it from the inside. I don't think I did the first time from the outside, but I did the second time.

Q. And when you sighted through it the second time you located this other shot?—A. I located this bullet in the wall.

Q. Was it a direct line?—A. A direct line as far as the vertical plane was considered.

Q. How about the horizontal plane?—A. As far as the horizontal plane was concerned it was below.

Q. I understood you to say it tumbled.—A. Yes; that's my recollection; that it tumbled somewhat, because the hole was a little larger than would be made by a bullet of that size, as indicated by the groove.

At this point the court took a recess until 11.15 o'clock a. m., at which hour the members of the court, the accused, his counsels, the witness, the reporter, and the judge-advocates resumed their seats.

By the witness:

Mr. President, since the recess I have been looking at that map on the wall, and I think I can give some further information concerning the angle which was made by that bullet which made the groove on the underside of the lintel.

By the president of the court:

If there is no objection, the witness can explain his answer by means of the map.

A. Where the bullet entered the wall was a little east, I think, of the center of the kitchen. That is a little up on the map from the center of the kitchen. In sighting through the groove I struck the upper back porch of B Company, between the fourth and fifth pillars on the porch. It was considerably to the east of the center of B Company barracks. I think it was a little farther east than the perpendicular line there from the barracks to the Yturria house. Possibly it may have been otherwise, but I think it was farther east than that, but it can be absolutely determined, of course, from the number of pillars that are in that back porch. I don't know how many there are; I think 10 or 12. There is another point which I should like to add to that. That porch spoken of is about 2 feet from the ground, the kitchen porch, the floor of it, to the best of my recollection.

Q. The lower porch?—A. Yes; the kitchen and dining-room porch, which we have been speaking of. I refer to the Yturria house, which we have just been talking about. I add that because it will tend to show where this bullet came from.

Q. And you looked through—what part of this hole did you look through? The hole that struck the underside of the lintel?—A. I looked through this groove from the inside; that is, from the point where it simply grazed the lower edge of the lintel.

Q. I want to know what part of the hole you looked through.—A. The center.

Q. Very sure it was in the center?—A. Yes.

Q. How much would a hair's breadth from the center have thrown that up or down?—A. It would have thrown it up considerably, but I took a very careful observation of it.

Q. But a hair's breadth variation would have thrown that out the height of the barracks, would it not?—A. I think not. A hair's breadth would not have thrown it out very much.

Q. How much?—A. A hair's breadth would not have thrown it out very considerable distance, to my mind.

Q. If you had gotten your eye a hair's breadth above the center of the inner side of that hole, you don't think it would have thrown it any appreciable distance out of the perpendicular?—A. If I had gotten my eye a hair's breadth above the center of the hole I could not have seen it; could not have seen the top of the groove in front.

Q. Wouldn't that have thrown it a very material distance, then, out of the center?—A. But I saw the top of the groove when I looked through the groove.

Q. How many times did you look through it?—A. The first time I was down there I think I only looked through it once, and I be-

lieve only once the second time. I may have done it several times, for all I know. I am only positive, however, of once. I would suggest, if I am not presumptuous, that points like that can be cleared up by inspection of the court at the ground itself. I would like also to state that I am the only official investigator who ever did look at those marks, as far as I know of, and it seems to me that that is very important testimony. It is a very important thing to be cleared up.

Q. We think so.—A. I certainly do.

Q. How many times you say you looked through it, that particular hole?—A. I told you I looked through it once on each time certainly, and possibly more.

Q. I think you said something about the direction of one of the others; how did you determine the direction of the one that went through the lintel?—A. I think that I got under the line joining the hole in the lintel to the hole in the wall.

Q. Got under the line?—A. Directly under the right line joining the hole in the lintel to the hole in the wall.

Q. How did you determine that?—A. There was a hole in the inside of the lintel plainly visible from the porch where I stood under it, and I got under the hole.

Q. How did you determine you were on the right line joining these two holes?—A. I did not determine it positively, simply as nearly as I could; got under it.

Q. Major Blocksom, as a matter of fact, if you were not directly on that line how in the world could you determine the direction of that bullet?—A. I could determine it approximately only.

Q. If you determined it only approximately—if you were not on that line positively—from your knowledge of looking through instruments, couldn't you have varied that direction so that the man who fired it might have been on the ground or on top of the roof of the barracks? Couldn't there have been that much variation?—A. They could not have been on the ground because my remembrance is the hole through the wall was lower than the hole through the lintel, so it must have been from some elevation he fired the shot, according to my remembrance.

Q. From your experience you are prepared to say that because a bullet going through a substance and dropping, it must have been fired ex o facto from a higher position?—A. Not necessarily, but the hole through the lintel was the same diameter at entrance as it was at exit, indicating that the bullet had made a clean passage and had not become deflected or had not tumbled in any way.

Q. You mean you determined that it had not changed its direction in passing through this 4 or more inches of material?—A. That was only an inference on my part. There might be a big hole in there in the middle; it is not probable at all. It might have been deflected an inch or two up or down, but the hole would have been different and of different size.

Q. As a matter of fact, isn't it true a bullet coming out of any substance would make it a little larger at the exit than at the entrance?—A. I don't pretend to know enough about that to say, but I think where a bullet from a high-power rifle enters a substance from a comparatively short distance from where it was fired it makes the same size hole at exit as it does at entrance. I heard that or read it somewhere.

Q. You have not determined it by experiment?—A. I have not by experiment, no.

Q. Do you remember whether these two holes we are talking about were the same at exit and entrance?—A. I can not say that because I did not measure them. I will say they looked about the same size.

Q. I think you testified in regard to that particular ball that that came from some other place on the barracks; where was that?—A. I did not testify to that. I said I estimated it came from about the same place as the first one.

Q. Then it would be on the barracks, back——A. On B Company back porch at a point somewhere between the center and the east end.

Q. How far east or west of the location of where the other came from, the first one?—A. I judged they came from about the same point on the porch.

Q. About the same point on the porch?—A. Yes.

Q. And you judged that in the method you described?—A. Of course my estimation was not actual. I don't pretend it was as to the second bullet. I only estimated it from getting it under it, which, of course, is not accurate. I don't claim it is.

Q. Would you say that bullet could not have been fired from the ground between the wall and B Company?—A. I say it is extremely improbable and almost impossible.

Q. Why?—A. It made a clean hole through the lintel, and probabilities are that the wood is the same texture throughout, and that the bullet was not deflected by any substance, as the hole of exit was the same as the hole of entrance, as I have said before.

Q. Could it have been fired from the top of the wall?—A. I don't think it could; I think it was too high up.

Q. Why not?—A. The wall, as I remember it, was only 3 feet—about 3 feet high, possibly 3½. A person standing on the wall and shooting——

Q. As a matter of fact, isn't that wall 4 to 4½ feet?—A. It is, possibly; it may be. If the wall was 4½ feet, the person shooting—the persons, I should say, shooting—would be not over 9½ feet from the ground. Where this bullet went through the lintel was nearly 10 feet from the ground.

Q. And you think the variation of a foot you could tell from where you went at it?—A. No; I don't mean to say I could tell within a foot, but I will say I don't think it was more than a foot either way from what I have said.

Q. Your determination, though, is based on the fact that you got up there on the porch between the bullet hole where it entered the house and the bullet hole where it came out of the lintel, and by that certainly inaccurate method you calculated that bullet also came from B Company porch?—A. It certainly was an inaccurate method, but the estimate I made was considered also with reference to the other bullet mark.

Q. That influenced your determination in this?—A. Yes; it undoubtedly did influence my determination. No question of that.

Q. How did you determine the other one you spoke of—the third one?—A. That likewise was estimated from the point where this bullet went out of the partition, the point where it entered the outside wall, and the mark on the door. I have forgotten whether these were in a line or not, but the general direction of the bullet

indicated it came from somewhere near the same point. That likewise, as I say, was an estimate.

Q. Had that bullet tumbled somewhat?—A. The bullet tumbled considerably.

Q. Wasn't there a house on the corner of the alley there, back of the Rendall house?—A. Yes; there was a little house where Mr. Martinez slept that night.

Q. Yes; the Rendall house.—A. I think it belonged to the Rendall house; it was in that yard.

Q. Did you examine to see if any of those shots came from that house?—A. Those shots could not possibly have come from that house.

Q. Did you examine to see if it might have come from the sink in rear of B Company—the top of that?—A. My remembrance is that that sink was too far west for such possibility. That sink may be where it is on that map, but my recollection is it was back of the center of the barrack.

Q. Might it have come from that point, then?—A. No.

Q. You are sure about that?—A. I am absolutely sure. But I think the sink is back of the center. If it was, it could not have come from there.

Q. Isn't there an oil house between that and C Company sink?—A. There are oil houses, as I remember, back of all the barracks; but I think the oil house of B Company was on the west side of the sink. I should think an accurate map would show where that sink is. I don't believe that is the correct position of that sink.

Q. Isn't that sink near the mouth of that alley?—A. It is near the mouth of the alley, yes; but I think not so near as that is.

Q. Isn't the alley nearly opposite the center of B Company?—A. No; the alley is not.

Q. As a matter of fact, isn't that sink to the east of the center of B Company?—A. It is on that map, but I don't believe that is the correct position of it. I believe the sink is opposite the center of B Company. I think all the sinks are opposite the center of those; think the oil house of B Company was on the west side of the sink; that it is too far west for any such supposition that the shots could have come from that. That's a subject which likewise can not be determined by testimony—that is, the position of that sink.

(Counsel here handed witness picture, already in evidence, as Exhibit —.)

Q. I think you are off on that.—A. No; I think I am right.

Q. How far west of the mouth of the alley do you place that sink?—A. A few feet only. I am simply guessing at it now. I should say 10 feet, possibly more. When I sighted through that groove in the lintel I did not see the sink at all, as I remember.

Q. You don't remember about that positively, do you?—A. I can't swear to it, but I am pretty certain.

Q. Isn't there a tree there?—A. There is a tree there.

Q. Where did you sight with respect to that tree—east or west?—A. As I remember it, I sighted through the tree, east of the trunk of the tree, but I may be mistaken about that. That's my recollection—that there was a tree there, and I looked through it, through this groove. It seems to me that that picture there which you have shown me of the barracks and sink clearly indicates that the direction from

the point of the barracks between the fourth and fifth pillars to that sink would strike somewhere between the alley and Elizabeth street.

Q. Isn't that the sink right in the center of the alley, I think it is?—A. That isn't the sink. I don't think that's the sink.

Q. What is it? Some house?—A. I don't know what it is, but that isn't the sink. It don't even agree with that map there.

(Counsel showed witness photograph No. 4, in book, Brownsville Affray, which photograph has not been submitted in evidence.)

Q. We don't claim that map is right; that's just sketched in from recollection. Those are the only bullet holes that you determined the direction of and examined the penetration of in that house?—A. Those three; yes.

Q. How deep into the dining-room door did that third bullet you traced penetrate?—A. The bullet which went into the dining-room door had tumbled and had struck the door on its longitudinal edge, I suppose you may call it; had penetrated the door about half an inch. That is to say, the longitudinal part of the bullet nearest the outside of the door was about half an inch from the surface.

Q. It was clearly imbedded within the door, was it?—A. It was clearly imbedded within the door, and the longitudinal direction of the bullet coincided in direction with the plane of the surface of the door almost exactly, as I remember, showing the bullet had gone in that way when it struck the door.

Q. Don't you mean the vertical plane instead of longitudinal plane?—A. Yes; although the bullet was at about that angle (showing with hands).

Q. In the vertical plane what was the angle?—A. Oh, from a vertical plane you mean, the longitudinal direction?

Q. Yes.—A. It was, I should say, about 30° from the vertical; that is, the point—it was the point, I think—was farther east than the base, making an angle of about 30° with the vertical. It struck it like this; the door was like this, at an angle like that. That is the angle from the point on the wall. (Witness indicated to counsel with two books.)

Q. And the angle up and down this way was how much—the angle of drop?—A. You mean the angle between the point on the wall where it came out?

Q. Yes.—A. I should say—simply guesswork it would be.

Q. I just want the indication of the amount of drop is all.—A. I should say the difference between the point where it left the partition and the door was 10 or 12 feet; the drop was 3 or 4 feet, possibly more than that. You can calculate the angle from that.

Q. The bullet was practically the same length, you said, in this particular case, and was imbedded its full length in the door; that is, the nose had penetrated more than its length?—A. As I said, the bullet had gone that way when it entered the door. (Here's the door.) That's the way the bullet went in, and penetrated one-half inch. The longitudinal direction of the bullet was parallel to the surface of the door, so it entered in that way.

Q. The nose was up or down?—A. The nose was up, as I remember, although I may be mistaken; I am pretty sure it was up.

Q. What kind of a hole did it make as it came through the partition wall? Was that a round hole?—A. No; as I remember, it was splintered.

Q. And had it gone through with its nose up—practically vertical direction—through the picture?—A. It made quite a hole in the picture, but I don't remember exactly what size or whether it did go clear through the back of the picture or not. I know it shattered the picture considerably, and my belief was, from looking at the picture, that the bullet was tumbling then.

Q. None of these bullets—these three you traced the course of—could have struck any foreign substance before it struck the lintel of the house?—A. I don't think they could.

Q. Could not have struck any tree, or any outside framework, or anything of that sort?—A. Of course I can't say positively to that; that's only my judgment.

Q. Next house you were asked about was the Cowen house, was it not?—A. I think so.

Q. How many bullet holes in that?

By the judge-advocate:

Rendall house, to be exact, page 1237 [582].

A. Yes; I described the Rendall house next.

Q. How many bullets in the Rendall house, then?—A. I only saw two; at least, I think I only saw two; I don't remember looking at the outside of the house where the bullet entered the wall outside.

Q. And there were two separate and distinct punctures from the outside?—A. I don't know; I didn't look at the outside, I said.

Q. Was it more than one bullet fired into it, or would you take it to be——A. I judged from what I saw that only one shot had been fired.

Q. And your description of that isn't satisfactory to me——A. I can probably show that better by——

Q. I doubt if it is to you, either. May I read your description of that direction?

(Counsel then read from the record, page 1237 [582], as follows. "A. I found the marks of one bullet, which had evidently come from a point almost north of the southwesterly end of D Company barracks. It had entered the house, I think, a little above the window of the corner room; that is, the room which was on Elizabeth street and the road next the barracks, upstairs, and had left the room; that is, had gone through the opposite wall at very nearly the same height. The bullet must have come nearly parallel, as I remember it, or nearly perpendicular to Elizabeth street.")

A. I should have said it must have gone almost parallel to the wall which is perpendicular to Elizabeth street; that's what I meant to say. To the wall of the room which is perpendicular to Elizabeth street. I probably expressed myself badly, as I generally do.

Q. Show us what you mean by a point from the southwesterly corner.—A. I can point that out on the map. I judged that the bullet entered, I think, a window about there, and that it came from some point down there. Might have been closer than that; might have come from there. (Witness indicated on map.)

Q. Might have been outside that wall?—A. Might have been outside of that wall.

Q. Or it might have come from down on the Rio Grande, might it not?—A. It might have, as far as my recollection goes. I am not

positive where the point was where it entered the opposite wall of the room; and even if it had been upper or lower that would have determined nothing, because it had to go through the first wall and might have been deflected.

Q. You didn't examine the outside entrance?—A. I didn't examine the outside entrance at all.

Q. You did examine the inside?—A. Yes.

Q. You said that was over the window?—A. That's my recollection; it was over the window.

Q. Do you recognize that picture (handing witness Exhibit —)?—A. Yes; that's the Rendall house and where the telegraph office is situated likewise.

Q. What window, according to your recollection, is it that went into?—A. This one; first window (indicating window nearest the barracks on Elizabeth street).

Q. Was it directly over the window, or where?—A. I am not positive, but I think it was directly over some part of the window. I have an idea it was over that part of the window to the west, but why I don't even now recollect.

Q. You think it was a little to the north of the window and directly over it?—A. North of the center; and I am almost positive that was the window; I think it was.

Q. What did that particular bullet penetrate?—A. It penetrated that wall and went into the wall the other side of the room; but whether it went through the wall or not I don't know and didn't investigate.

Q. Did you ever find that bullet?—A. No; I don't remember asking anything about the bullet. As I said, I didn't attribute much value to the bullets themselves at that time for the reason that I was absolutely positive from the other evidence and didn't think it was necessary to look up bullets or shells.

Q. That was what convinced Major Penrose, wasn't it—the shells?—A. Yes; it was.

Q. He was unconvinced, as far as your information showed, up to the time the shells were shown him, wasn't he?—A. He was.

Q. Can you give us any idea of what the material was that was made of? It was pine, wasn't it?—A. I think it was, although I don't know.

Q. Do you remember whether there were any shingles in the line of that bullet?—A. I don't know; as I said, I didn't see the point of entrance outside.

Q. You only examined that bullet hole from the inside?—A. Inside, that's all as far as I recollect. I am almost positive I didn't look at it outside.

Q. I simply mention this to remind you. Wasn't that, as a matter of fact, wood inside and outside? That is, the weatherboarding was wood; the inside ceiling was wood covered with what they call down in that country manta?—A. My impression is that the wall—the outer and inner edge of it—was wood, but I don't remember what the covering was.

Q. Do you remember seeing any hole in the cloth inside?—A. I don't recollect what that hole looked like at all.

At this point, there being a motion before the court to adjourn, a member of the court made the following remarks:

Before adjournment, I would like to suggest, for the consideration of the court, whether or not, with the consent of the defense and the prosecution, it would not be a good idea for this court to go to Fort Brown and Brownsville and see these matters for themselves. We are told these maps we have here are inaccurate and everything of that kind.

By counsel:

Personally the defense would be very much pleased to have the court look at the locus in situ.

By the judge-advocate:

The prosecution also would be very much tickled if the court would go down there and look over the ground themselves.

By the witness:

I must say, as far as I am concerned, that I would be very much pleased.

At this point a motion was made and seconded that the court sit until 12.30, and the president of the court instructed that the trial proceed.

Q. As far as you know, then, might not this bullet hole have been made, or these bullet holes have been made, from the back of the house instead of the front?—A. I only know my idea at the time was they came from the front, but I don't recollect why unless it was because there must have been splinters or something to indicate it, although I don't remember anything about it.

Q. Your recollection is not accurate enough to warrant your saying it did not come from the back of the house instead of the front?—A. I only know what my impression was at the time.

Q. Will you state positively now it did not come from the back instead of the front?—A. I will state it is my belief it didn't.

Q. And I think you said yesterday that all the bullet holes in the Cowen house came from the east or the alley?—A. That was my judgment of course.

Q. Did you see any that came from any other place into that house?—A. To the best of my recollection, I did not.

Q. And how many did you say you saw in that?—A. I saw the marks of what I judged to be 8 or 10 bullets—of course there were a great many more marks than that. I saw somewhere near 20 or 30 marks at different places.

Q. But the points of entrance of these, as your recollection now is, showed that they had been fired from what point?—A. From a point in the alley. Some of them struck——

Q. Go and show us, will you, about where you located the firing point of these shots, whatever they were?—A. Some of these shots entered from about a point there, I should say, and I think some of them from a point over here. It seemed to me most of them came from right here (indicating a point in the alley about on a prolongation of the rear wall of the house and west or southwest of the center of the alley and another point). The first is very nearly in a prolongation. Of course I can't say how far away the origin was, and some of them came from a point from the south of the other point.

Q. All of them being in the alley?—A. I think all of them in the alley. Possibly they might have come from the inside of the yard.

Q. Some may have come from the inside of the Cowen yard?—A. They might have come from there—that is, as far as the marks themselves go.

Q. Did you find any shots that entered from the Fourteenth street side at all—any shot holes?—A. I don't recollect of any at all, although I won't be certain that none did come from there.

Q. You have no recollection of any coming from there?—A. No; I have no recollection now. I did think at one time that some did come from there, when I was there the first time, but I changed my mind afterwards.

Q. Your recollection now is?—A. My recollection now is that they all came from the alley.

Q. Can you tell us about any of these shots, where they struck?—A. Some of them struck——

Q. Take any one and follow it. We want the penetration, etc.—A. I think one or two of them struck the wall of the house on the side next the alley and went through all three of those rooms on the south side of the house.

Q. Some of them; how many?—A. One or two I think did.

Q. One or two went clear through?—A. Yes. This, I want distinctly understood, is my memory only. I am not positive.

By the counsel:

These are the ones, may it please the court, we objected to his testifying about, because it was the first evidence we had of it.

A. Two or three of the bullets on that side—possibly three or four of them—went through either the window shutter or the window sash or screens. There were enough marks there to show there were probably three or four bullets, as I recollect.

Q. Went through the window sash?—A. Through the window sash—I mean through the window shutter and the window itself and the screen—to show me there were three or four bullets through that window. That's the best of my recollection, of course. Then through the side window I think there were one or two marks. On the fence outside there were marks of one or two bullets, if I recollect, right opposite the holes which went through the east side of the house.

Q. Let's go back and take up the two you said went clear through the house. Did you trace those two clear through?—A. My remembrance is I did.

Q. How much substance or material, like wood or plaster, did those go through?—A. About the first part of the house I don't remember at all how thick it was, but I think it was all wood, outside and in. What was in the interior of it I don't know, and I am not positive, absolutely positive, that the inside of it was of wood, but I think it was. The partitions between the east room and the center or dining room and the other room west of that were very thin—at least my recollection is that they were very thin—possibly of wood only. The other wall was probably like the first.

Q. Will you tell us what these two bullets went through now——

A. Remember, I am not positive in saying two bullets or even three. My recollection is there were——

Q. One, two, or three; it makes no difference. We are bunching them together to get this: What was the general appearance of the holes as to holes? First, where it struck the outside, the inside, and on through?—A. My recollection is where it went through the first wall that the hole of exit through that wall was not appreciably larger than where it entered, although there possibly may have been some splinters there. I think the other holes were somewhat more splintered, although whether they indicated that the bullet had tumbled or not I don't remember, and the same of where those bullets entered the final wall. I have very little recollection of how those holes looked.

Q. They must have passed through at least six different parts of wood, must they not, counting the outside, the inside, and the two outside walls?—A. Yes; to the best of my recollection they must have.

Q. And you don't recollect whether there was any appreciable difference in the size of those holes?—A. Except they were made by a small bullet and a rifle of great power.

Q. No indication that the bullet had broken up at all, so far as the holes were concerned?—A. In regard to those bullets, I don't think there was any.

Q. Can you segregate and separate from those the bullets you said went into the window? You said how many?—A. Three or four, I think. They went through the ordinary window blind—green blind. I think the shutters were closed—were not entirely closed; that is, the part that moves up and down—closes and opens—because one bullet, I remember distinctly, had made marks on two different parts of the shutter. They must have been very close together—that is, showing that the shutter was partially open.

Q. What did they penetrate besides the shutter?—A. Some of them may have gone into the fence first; probably two or three did.

Q. Did you notice the difference in the size of the hole of any of those that went through the shutter or window?—A. As I remember, they were all the same size and small.

Q. Did any of them break through the glass? Any broken glass, as you recall?—A. I don't remember that. I think not. I don't think they went through the glass. I think the window was up, although I won't be even positive of that.

Q. Where did these go to? What became of them? Do you recollect?—A. I remember one—I think it was one of those—went through the window, because where it went was rather low down—struck a bureau which was in the first room. It ran along the front edge of the bureau; went through probably 3 inches of the front of it, which was solid walnut, looked like to me, and then scraped along a door; made quite a considerable penetration all through this bureau, although on parts it only grazed it.

Q. Can't you be a little more definite about that?—A. I can't do it without describing the bureau, which is very hard to do.

Q. We want to know how much wood it went through.—A. About 3 inches I should say of solid wood where it first struck the bureau, if I remember correctly; then it went along and made either a groove, or may have made a hole along part of the doors. I think there were

two doors to this bureau which opened out. I don't remember whether in leaving it struck the same sort of a projection it did in entering or not, but my impression is it went through 3 inches of solid material only.

Q. And grazed along the other?—A. Grazed along the other and broke it off and splintered it.

Q. Was there any indication in that that the bullet had changed its form in any way?—A. I don't remember positively, but I don't think it had.

Q. You think it still maintained that sharp point and rotary action?—A. Yes.

Q. Where did it afterwards and finally land?—A. I don't remember where it went.

Q. You never saw that bullet?—A. No; I didn't.

Q. Any others you can trace after they came through the window?—A. There was one bullet which entered the partition between the dining room and the room north of it or the hall. I don't know exactly where this bullet entered that partition, but it came out in the bedroom or middle bedroom, west of the house, I think. That was the bullet which tumbled and went into this wardrobe.

Q. Tell us how much that bullet had penetrated exactly, as you recall it now—that is, wood or any other substance.—A. Whether that bullet went through the window or the wall I don't know, but I think it must have gone through the window. And that was about the only material substance it went through—was this partition that it went through, of course, in a diagonal direction—and my belief is that is the bullet that struck the wardrobe with the glass door.

Q. And only went through the window?—A. Through the window and this partition.

Q. And that partition was ordinary thin wood?—A. I can point out better. My impression is that bullet came from about a point there; came in from there and struck that partition somewhere about there, or possibly there, and went into the partition a little way, foot and a half, and came out at some point about there in this bedroom, and struck the wardrobe somewhere over here. (Indicated this on map.)

Q. Evidently was deflected?—A. I don't know whether it was deflected or not. I know the general direction of it was that (indicating westerly direction and indicating that the bedroom was the one farthest southwest—farthest from the alley).

Q. That's where it struck the glass mirror—in the bedroom farthest from the alley?—A. It was that west middle bedroom; I think it was a bedroom.

Q. I misunderstood you.—A. Perhaps I had better point it out. This room here, about there, was where it finally struck that wardrobe.

Q. That's what I said.—A. Farthest from the alley.

Q. That's what I meant to say, if I didn't. I think I did. Did you state yesterday how thick that mirror was that was broken?—A. Simply guesswork on my part. I think I said it was about one-fourth of an inch.

Q. Do you remember what effect it produced on that?—A. There was a hole; I think I can describe it better. (Witness draws on piece of paper.) The hole was on the right-hand door of the ward-

robe. I think there were two doors, and they opened out from the center. This hole was near the center of the wardrobe—that is, near the edge of this door, this right-hand door—and it made quite a hole, as I remember, something like that—this part being denuded of glass—somewhat more than half a quadrate.

Q. How much of that—that hole, I should say?—A. My recollection is there was a piece of wood running along that door just below where this bullet struck. At least I have that recollection, that that was the shape of the hole. Understand?

Q. Yes; like a cut off a quarter of a circle.—A. Yes; to the best of my recollection, that's the kind of hole, although I may be mistaken about that piece of wood.

Q. Did you examine that bullet?—A. Yes; I examined that bullet.

Q. Describe that bullet to us, will you?—A. That bullet was, I should say, a Springfield rifle bullet, without doubt. The nose of it was perfect, as far as I recollect; had these marks of the four lands on it.

Q. On the bullet itself?—A. On the bullet itself. The base was flattened evidently from having struck some hard substance while tumbling. It indicated to my mind that the base had struck first.

Q. And these four lands were distinct; not more than four lands?—A. There were no more, no less; they were exactly the same as the marks on the other bullets.

Q. That had gone through how much wood? How many different pieces of wood?—A. It may have gone through the fence.

Q. You think it probably did?—A. I thought it was a little too high. It may have gone through the shutter, and probably went through the shutter and the screen.

Q. How thick was the shutter?—A. The shutters were thin, not more than—that is, the flaps, whatever you call them—not more than one-fourth of an inch thick.

Q. And what else?—A. Possibly through the wire screen. Then through this partition I have described.

Q. Didn't it go through two partitions? It had to go through two to get to the other end.—A. I am not certain whether it struck very close to the door or not. It is possible it may have struck close to the door and have gone diagonally through two feet of that partition, but I can't say how far it did go through that.

Q. How much wood altogether would you say it went through; that is, your recollection now?—A. I don't remember what that partition is made of, but I think it was thicker than the partitions between the three rooms back. It was wood—that is, the outside—and inside of it, what and how thick it was or what the interior was composed of I don't know. My recollection is that they were considerably splintered on the side. There was considerable splinters where the bullet emerged on the inside of this last bedroom.

Q. Was there any plastering that any of these bullets went through in this house?—A. I don't remember any.

Q. And the fence outside was an ordinary inch-board fence, was it, what we call a solid inch-board fence?—A. An ordinary board fence, I think, probably one-fourth of an inch (showing witness photograph, No. 12 in book, Exhibit). It is a picket fence in front and a board fence behind. That's right. I suppose the board

fence is one-half an inch thick, possibly, or less; three-fourths, perhaps.

Q. Give us your best recollection of the penetration of wood in inches.—A. It is only an estimate.

Q. That's what I want, as near as you can give it.—A. I can't say, because I don't know what the inside of that partition wall was. If it was solid it went through probably a foot and a half of material.

On motion of a member, the court was cleared. The accused, his counsels, the witness, the reporter, and the judge-advocates withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to state that in view of the peculiar circumstances attending this case, the court has allowed exceptional latitude in the examination of witnesses.

It has also granted numerous adjournments and recesses, at the request of counsel, to enable them to look up authorities and evidence and to further prepare their case. The court feels that both prosecution and defense are now, after four weeks of patient investigation, in position to carry forward the examination of witnesses with greater expedition, without calling for opinions of witnesses and without seeking delays or postponements for further preparation. The court will hereafter expect counsel to come into court prepared to examine witnesses with promptness, without seeking delays for further preparation, and that the examination of witnesses shall be directed to what they personally know, avoiding hearsay evidence and the calling for inferences, opinions or conclusions, or arguments of witnesses. What witnesses saw, heard, did, etc., bearing on the specific allegations set forth in the charges are material, but it must be left to the court to draw conclusions.

The court then, at 1 o'clock p. m., adjourned to meet at 10 o'clock a. m., Monday morning, March 4, 1907.

CHAS. E. HAY, Jr.,
Captain, Acting Judge-Advocate, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., March 4, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocates. The accused, his counsels, and the reporter were also present.

The reading of the proceedings of March 2 was dispensed with.

Maj. A. P. BLOCKSOM, Inspector-General's Department, was reminded that he was still under oath.

Counsel for accused then requested that the court grant a cleared but not closed session for a few minutes, which was granted. The witness, the spectators, and representatives of the press then withdrew. Counsel for the accused then addressed the court as follows:

May it please the court, there are two or three matters we want to bring up we don't think it desirable to have the press consider, and first we wish to bring our attention to the order of the court on last Saturday. In regard to the recesses and adjournments, to which reference was made, we wish to say that these are granted in all important cases, whether civil or military, as is well known by anyone who has had experience therewith—especially when there has been no time for preparation by counsel. In this connection we wish to invite the court's attention to the fact that we were originally served with charges containing the names of but eight witnesses; shortly before coming into court we were notified that all of Brownsville would appear as witnesses against

our client. We then learned for the first time that all of Brownsville meant 39 or 40 witnesses, which list was later on, and after trial commenced, increased by 10 others, practically all of whom had previously testified without cross-examination several times. This immense amount of untested evidence was contained in two large volumes, impossible to digest in even a month under the conditions that have surrounded counsel in this case. From this large aggregation of Brownsville witnesses you have accumulated more than 1,400 pages of record and you have thus far had presented to you only three of the original list of witnesses and with whose cross-examination we submit there have been no unusual delays. We beg to state also that, when the circumstances are all considered and the further fact that we have never been advised who of these witnesses was to appear until actually presented to the court as such, there have been no unusual delays even in their cross-examination.

Now we recognize and appreciate that this court has been patient and we recognize further that there has been an immense amount of evidence presented solely to establish the fact that the colored troops of the Twenty-fifth Infantry did the alleged shooting in Brownsville, much of which we think could have well been omitted. We also realize the attitude of the court toward this evidence and that you are thoroughly saturated with it and are naturally restive under a forced attention to it, but we submit that the most satisfactory method of curtailing it and relieving the situation would be to cut down the number of witnesses introduced, instead of prescribing a rule of procedure when, we are informed, the prosecution is about finished and such rule must necessarily apply to the evidence about to be submitted by the defense. In this connection we wish to add that while we shall submit in perfect good faith to any and all rules laid down by this court so long as such rules do not infringe the rights of our client we feel that the fact of this shooting is alleged to have been caused directly as a result of the negligence of the accused, and this fact has been given political prominence through the press of the country, and since and so long as the prosecution continues to give it so much prominence, we feel it would be an unquestionable and unjustifiable error to fail to test the accuracy of any and all evidence thus submitted by every legitimate method known to us, so that while in the minds of some, at least, of the members of the court this course is not approved of, yet the fact remains that we have been officially designated as counsel to defend Major Penrose, and so long as we are occupying this position we must conduct the defense on the lines that present themselves to us as proper and right. This is a question of policy that we alone can determine, however mistaken we may be therein and however much the court or any members may differ with us thereon. In following this policy we respectfully request that we be accorded as a right absolute freedom of action so long as we do not violate or infringe any rights pertaining to us as counsel:

We have tried honestly and faithfully to obey the mandates of the court in the past and we promise and intend to do so in the future. We do not feel that we have consciously brought out from this witness any improper evidence of the character mentioned in your order. All of his reports, etc., admitted by this court were subject to objection, and most of them would have been ruled out in civil courts, although the practice of military courts may sometimes admit them. That portion, however, upon which he was being cross-examined at the time of, and which presumably caused the announcement of the ruling of this court under consideration, was admitted, you will recollect, over the objection of us as counsel, which adds but another reason for closer cross-examination thereon. We admitted these official reports of this witness without objection because we felt that his reports properly explained by the witness would practically exonerate this accused. We cross-examined him as to his other statements and reports under the following rule announced by Mr. Winthrop: Under general heading "Cross-examination:" "But a question whether the witness has not at some previous time told a different story or given a different account of the matter testified to on his direct examination is not collateral or irrelevant, nor is a question whether the witness has not previously expressed hostility toward the accused. A question of either kind being relevant may be asked the witness on cross-examination with a view of contradicting him by other evidence in the event of his returning a negative answer."

In concluding our reply, we wish to respectfully request as follows: First, that whenever this court finds it necessary to interpose an objection to evidence or procedure, considered by it improper or inadmissible, and to which the judge-advocate fails to object, that such objection be interposed at the time of

its occurrence, and, second, that when this court decides to announce a ruling of conduct which reflects upon the conduct of counsel that this be done in cleared court and that such censure, whether implied or expressed, be not handed out directly to the press or associated press of this country, which is well known to be hostile to the accused in this case, to be used as glittering headlines to attract the reading public and increase their sales. Such consideration toward counsel we beg to assure you would be very much appreciated indeed.

That finishes up all we have to say on that point, and now we wish to give the court the history of the status in which we find ourselves in regard to certain witnesses that we have summoned.

By a member of the court:

Before counsel leaves that subject I would like to ask if he can advise us on that point, if he knows that any censure or remark or comment by this court has been distorted or used by the press to illuminate its pages in the way of headlines, either in the way of discredit to the prosecution or defense. I don't read that matter, carefully avoid it, so I am not informed.

By counsel:

In reply to that I would state that I did see it in flaring headlines in at least two of the local papers and I know, by being directly informed by the reporter of one of them, that he is also the reporter of the Associated Press. I also saw given prominence, not in headlines however, a criticism of the court which had been thus headlined, in our army paper, and the last criticism I was taunted with by this same Associated-Press man on Saturday night in the Officers' Club. I don't care to go into his language, but it was in the form of a taunt, and it was in the presence of the associate counsel——

By the judge-advocate:

In the presence of the judge-advocate also.

By counsel:

Yes; I think you were present. Our position in that is, we have no objection to the criticism of the court at all—that part of it as being handed out to be broadcast over the country, and, may I add personally as one of the counsel, having occupied that status before, it is not so offensive to me as it might be under other circumstances.

By the president of the court:

If there is no objection, I think I can state, with the approval of the court, that the decision of the court was not intended as a criticism. If it gave any such impression, the court had no intention that it should do so. The court, as I understand it, desired to put itself on record as simply feeling that no unnecessary delay should be incurred by the introduction of argumentary discussion or opinions of witnesses primarily. There was no intention on the part of the court to curtail the well-known rights of counsel to take such measures in the examination of witnesses as he himself might consider for the best interests of the accused. Further, I might say that I think the court appreciates most fully the position of the counsel and desires to extend to him any courtesy or consideration possible under the rules of procedure for courts-martial.

By counsel:

We want to thank the court for that expression, and again assure the court that we purpose in the future, in good faith, to confine ourselves strictly to what is authorized us as counsel.

In line with this, another separate and distinct matter, but bearing directly upon it. Some time ago, in personal conversation with the president of this court, I was asked whether or not we would be prepared to proceed with the defense immediately upon the closing of the prosecution, and we replied promptly and positively "Yes." And it is in this connection that we wish to give you the history of what we have done in regard to the summoning of witnesses—members of the Twenty-fifth Infantry. Our purpose in summoning some of them was to have them tell their side of the story—we know fully what it will be—and a number of others were summoned for the purpose of

corroborating the statements of other witnesses of the prosecution now here. I do not believe, in all frankness, this would have been at all necessary if the prosecution had limited itself, as it announced in the first place, to the eight original witnesses. We now consider a number of them necessary from developments as the case has progressed, and we feel we would be omitting our duty not to have some of these witnesses here. They were summoned, I believe, Captain Hay, on the 16th of the month, forwarded in the usual course, and to these summons we received a reply, which I will ask the judge-advocate to read, with its date.

Judge-advocate then read to the court telegram as follows:

WASHINGTON, D. C., *February 26.*

Capt. CHARLES E. HAY, Jr.,
Judge-Advocate, Department of Texas, San Antonio, Tex.:

Reference subpœnas for witness before court-martial in case Major Penrose, following letter received from Chairman Committee Military Affairs, Senate:

"We find on examination that only Mingo Sanders, Jacob Frazier, and Samuel W. Harley are still present in Washington of all those for whom you have prepared subpœnas inclosed in your letter. All the others also have been present, have been discharged, and have returned to their homes, leaving their respective addresses with the Sergeant-at-Arms of the Senate. The three witnesses above mentioned—Sanders, Frazier, and Harley—are held for further examination by this committee, but they could be temporarily dismissed by the committee if it can be so arranged that after they have testified before the court-martial they may return here for reexamination in two weeks or so. These witnesses who have been notified they are to be subpœnaed want to know what arrangements will be made for their transportation. If you will kindly advise me regarding this point, I will be much obliged."

Secretary War desires to know what your wishes are.

MCCAIN, *Military Secretary.*

By the judge-advocate:

At request of counsel, I sent the following reply to that telegram. This was sent the following day, the 27th of February, I think:

"MILITARY SECRETARY, *Washington, D. C.:*

"Reference your telegram 26th instant, counsel for defense informs me he would like subpœnas forwarded to present addresses of witnesses with request for service. Testimony of Mingo Sanders, Jacob Frazier, and Samuel Harley can be taken within five days after their arrival here, and they can then return to Washington. Suggest arrangements be made with Pay Department for payment of mileage of said witnesses before beginning of journey, and that undersigned be notified.

"HAY, *Judge-Advocate.*"

By counsel:

I would state that this being sent on the 27th, the reply was not received or did not come to my notice until Saturday night, the night of the last session of the court.

The judge-advocate then read reply to last telegram, as follows:

WASHINGTON, D. C., *March 2.*

Capt. CHAS. E. HAY, Jr.,
Acting Judge-Advocate, San Antonio, Tex.:

Referring your telegram February 27, subpœnas have been transmitted to the summary court officer, Washington Barracks, with instructions to serve them with least practicable delay. It is not practicable to furnish transportation in advance to witnesses.

By order Secretary War:

LADD, *Military Secretary.*

By the counsel:

Now, you will note, may it please the court, that there was an interval of ten days between our first calling for them and the first reply, and the witnesses were called for to be here, as I understood—I may be in error—last Monday. So it was the day after the men were summoned to be here that we

got the telegram, the first notice, and there was a delay from February 26 to March 2 in reply to our further telegram. Now, we have conferred together in regard to this matter, and the only solution of it under the law we can find is that this accused must put up either this amount of money, either on deposit as a guaranty, amounting to at least $700 or $800, or he must pay out that amount of money to buy tickets to bring the necessary witnesses here; and we propose now to reduce the number, taking that to be the desire of the court, to the minimum on the question of the events that have been thrashed out for the past five weeks, and limit ourselves to necessary witnesses to corroborate evidence; and we will, as soon as we can have a chance to study it, make that list out; but this explanation is made to the court now not because we think you can help us, but because we want you to understand exactly the position in which we stand and the attitude of mind in which we expect to approach the subject of the evidence for the defense, and if there are delays we want you to appreciate and understand they are not of our making.

By a member of the court:

I would like to ask whether or not the evidence he desires can be taken by deposition.

By counsel:

Some of it possibly, but very little, but I would prefer to answer that after I have studied just what we want to produce by the witnesses. Frankly we want to say to the court we want to avoid depositions; if it is possible, we want the court to see these witnesses as you have seen all the other witnesses.

By a member of the court:

I would like to ask counsel if he is in position and willing at this time to acquaint the prosecution with what he intends to establish by these remote witnesses.

By counsel:

We will look it over and be in position to state to the court, and the prosecution, if the court so directs, but we prefer not to, unless we are forced to do it, outline our defense until after the prosecution is closed. That is not customary nor fair, but we will if the court desires it, but we don't think that a fair way to conduct a case.

By a member of the court:

We ask if you are prepared to do it, with a view of the prosecution being able to admit all or part of the evidence to be testified to by the witnesses.

By counsel:

We are well aware of that, and we know the value to be attached to admitted evidence. We think it but fair that this court see these witnesses who have been testifying and are testifying before the country. This case, we maintain, is way beyond the ordinary case, and we don't feel—we may be in error—that a court-martial, and I say this with more or less trepidation—a court-martial sitting as you are in such a prominent case, should avoid having those witnesses here if it is practicable—and certainly so long as we are willing to put up the necessary guaranty to bring them here.

By the president of the court:

I would say that there is no disposition on the part of the court—if there is objection I won't say this—to allowing such time as may be necessary to enable the defense to secure the presence of any witnesses that the defense themselves may feel necessary in the case. There appears to be no objection to that on the part of the court.

By counsel:

As further evidence of good faith, we will advise the court now that we will try to get this guaranty or the money, or whatever action we take—we will try to get off by wire to-day. We are going to do all we can to avoid delay.

By a member of the court:

I would like to ask whether the counsel contemplates bringing more witnesses than those three who are in Washington City. That telegram said there were three still there.

By counsel:

I might state roughly there will be in the vicinity of eight. Major Penrose has figured on it more closely than we have. I have not had time to do so.

By a member of the court:

There are possibilities that these witnesses will not be here for two or three weeks.

By counsel:

I don't think there is any contingency to be feared of that sort. We wanted the court to know what has been going on that has not been brought to your attention before, and to show the president of the court our good faith. I think they will be here this week; hope so.

By a member of the court:

Can the defense proceed without these witnesses? Are there any witnesses here at all?

By counsel:

Oh, yes: we will proceed right along. I don't think there will be any hitch; but we want to prepare the court's mind for the situation; we want to show we have acted in good faith and made every legitimate effort to get the witnesses here on time.

By the president of the court:

I would like to call the attention of all concerned to the fact that the prosecution is not yet closed.

By a member of the court:

I should like to still further elaborate on the point the member has made, that the counsel for the defense and the prosecution will take up the question as to the admission of evidence that is proposed to be brought before the court from witnesses that are not present. It has been suggested by a member of the court, and, I think, counsel admitted that it could be discussed.

By the president of the court:

Unless there is objection, in order to save time, I will say I think the matter is covered by the decision that I announced, subject, of course, to the approval of the court, that the court felt that the defense was entitled to such witnesses as they believed were necessary for their case.

By a member of the court:

Mr. President, there is a limit to both prosecution and defense in all criminal courts we have any knowledge of. The prosecution has been allowed here to go on almost without limit. It is the ruling in criminal courts, as I remember and understand it, for the prosecution to establish——

By the president of the court:

I object to encumbering the record with discussions of this matter, and will make the objection right now that this will be stricken out and not considered. I object to further discussion in open court of this question. I ask that the court be cleared.

The accused, his counsels, the reporter, and the judge-advocates then withdrew and the court was closed, and, on being opened, the president announced, in their presence, also in presence of witness, as follows:

I am instructed by the court to announce that the court does not deem it necessary at this time to act upon the request of counsel for the defense.

CROSS-EXAMINATION OF MAJOR BLOCKSOM CONTINUED.

Q. Major, from what we were discussing when the court adjourned on Saturday—the shots that entered the Cowen house—from what points were all the shots fired that you examined?—A. From what points?

Q. Well, give us the general direction.—A. I have already described that.

Q. With respect to the house; will you show us on the map, that would be better?—A. Some of the shots came from about there; of course I don't know how close to the fence they were fired from. Some of them came from over there, possibly. (Indicated on map.)

Q. Did these bullets enter the house diagonally or perpendicularly to the northeast side of the house?—A. Most of them entered diagonally, making that sort of an angle, more or less.

Q. Then they came generally from east to west?—A. Almost, though some of them must have gone nearly parallel, because I remember that there were one or two shots in this back wall.

Q. Were any fired from in front of the back line of the house—that is, the line that runs northeast and southwest?—A. You mean this line?

Q. Yes.—A. Some of them, I think, undoubtedly were fired from this side—a few of them.

Q. Did any of them go into that northern corner room of the house?—A. You mean this room?

Q. Yes; that would be the northern corner.—A. None that I recollect.

Q. So that all of them entered the house from the alley and none of them struck that front room. Now, then, did any of them pass through the middle room of the house there—the front room I mean?—A. This one?

Q. Yes.—A. I don't remember. I remember that one shot I was speaking of yesterday striking the kitchen, but whether it penetrated the inside of this room—no it couldn't have penetrated the inside of this room; it came out between that partition and the door.

Q. You can't state whether one or more or exactly how many entered that rear north or west shed room—east shed room I mean; the east shed room up on the alley?—A. You mean this one?

Q. Yes.—A. Nearly all the shots.

Q. Struck that room?—A. Struck that room. I think all of them. I believe several of them came in through here; through this dining room.

Q. Do you know how many came vertically into the room from that alley?—A. What do you mean by vertically? This way?

Q. Yes.—A. My impression is that this bureau, which I spoke of the other day, had its back to this wall that comes along here.

Q. That's the partition wall separating the front from the rear room?—A. Yes; and that would make the direction of that bullet nearly parallel to this partition, unless that bureau was in a different position when fired into.

Q. Or unless it was deflected after it struck the outer portion of the house, eh?—A. That is possible.

Q. I think you stated that the only bullet you saw in that house

was the one that struck the looking-glass and fell behind it?—A. Yes.

Q. Did you examine that particular one?—A. That bullet?

Q. Yes.—A. I have given a description of it.

Q. Did you examine to see how many marks of lands on it?—A. Yes; there were the marks of four lands on it.

Q. And no more?—A. No more.

Q. You didn't state what kind of a bullet it was, did you?—A. It was a Springfield rifle bullet.

Q. How did you distinguish that from the Krag?—A. By its nose; by the fact that there were no—well, I distinguished it afterwards. I did not distinguish it at the time.

Q. Where and when?—A. When I saw what Krag bullets were—the difference between them and the Springfield.

Q. Where was that?—A. That was at San Antonio, when I heard an officer testify before Mr. Purdy—several officers I heard testify before Mr. Purdy, and when I saw a number of shells, cartridges, Springfield and Krag. This same bullet was there shown and these differences, or differences between it and the Krag, were shown by other officers.

Q. It is always possible to distinguish them—a Krag from a Springfield?—A. It is, in my opinion, unless they are very markedly disfigured in some way.

Q. This particular one was disfigured, as I recall.—A. It was disfigured at the base—flattened at the base; otherwise it was nearly perfect, as I remember.

Q. In your direct evidence you said, "I saw pieces of a jacket which were shown by Mrs. Cowen at the December investigation; there were two or three pieces—looked like bent tin." That's another bullet than you mentioned?—A. That's another bullet.

Q. You don't know where that struck?—A. No.

Q. Did you examine the lands to see how many marks had been made on that?—A. No; there were no marks at all on that of that kind. The jacket had been torn off and it was all bent so you could hardly tell anything about marks. I don't think there were any marks of lands on those he had—very small pieces.

Q. I want to take up the Miller Hotel, and first I want to eliminate all you don't know personally about it. You didn't examine the holes that were made in the brick in the front part of the hotel?—A. You mean on the Thirteenth street side of the hotel?

Q. If you call that the side.—A. There were none in the front.

Q. I had in mind the Thirteenth street side, yes.—A. I only examined those on the Thirteenth street side. I will except the bullet that entered the frame of the door next the corner of the alley—the frame of the window next the corner of the alley. I described that in my evidence the other day.

Q. It was not clear to me, is the reason I want to get it cleared up now.—A. That was in the third story.

Q. Here's a picture of the Miller Hotel on Thirteenth street (handing witness photograph).—A. A bullet entered the framework corresponding to that on this side. (Indicates a third-story window in the Miller Hotel on the Thirteenth street side and on the north corner next to the alley.) That bullet went through that framework there (indicating point about halfway from the bottom lintel along the

lower sash of the window). This bullet went through that framework, went through the door of the wall which runs perpendicular to this outside wall—probably between these two windows.

Q. That is, between this window and the one in the same story toward Elizabeth street—the second window from the corner?—A. Yes; it went through the door opening out into that hall at which this second window—this second window is on the end of that hall. It went through that door of that hall and went into the ceiling of the hall. Where it went then I don't know.

Q. Went into the ceiling in the hall?—A. Yes.

Q. What material did it go through from the time it first touched the window?—A. It went clean through the window frame; possibly 2 or 3 inches of wood; then through the door——

Q. Did it go through any brick or plaster?—A. I don't think it went through any plaster or any brick. It went through the door, probably just an ordinary door, I don't know exactly how thick, and then went through the ceiling; I suppose it went clear through.

Q. Was this ceiling plaster or was it board?—A. My remembrance is it was board.

Q. How were these various holes of entrance and exit?—A. As I remember it, the holes of entrance and exit through the window sash wasn't very marked; that is, I mean it was not rough or splintered much.

Q. The same size both sides?—A. I think nearly the same size at entrance as it was at exit, although I am not positive on that subject. The hole in the door was somewhat enlarged, as it went through diagonally.

Q. How much?—A. I don't remember. And I think the hole in the ceiling was somewhat larger than a bullet would have made if it had gone straight through, although I don't positively remember. I know I saw the hole very easily and recollect it.

Q. You spoke once of its going through the frame of the window and once of going through the sash; which did it go through, or did it enter both?—A. I think it went through the frame.

Q. And did not touch the sash proper?—A. No; I think the window was up, and I don't think it would have touched it if it had been down.

Q. Now, so you will understand the drift of my question, where did you estimate that particular shot came from?—A. I estimated it must have come from across Thirteenth street somewhat diagonally, near the opposite corner. On the map, it came from over here somewhere.

Q. Then it was ranging upward and struck the house diagonally?—A. Yes.

Q. Was it deflected from striking the window frame and before it struck the door?—A. I am uncertain about that, but I think it was slightly deflected; but I can't say positively.

Q. That's all the material as to that one. Now, what other one do you remember having examined on this front of the house?—A. There was another bullet mark—described to me as a bullet mark—which struck the brick within 2 or 3 inches of this other mark (indicating a point 2 or 3 inches toward Elizabeth street from where the other bullet entered the same window).

Q. Now, did you examine that personally, so you are prepared to say in your opinion it was a bullet hole? If not, we don't want to waste time examining about it.—A. My belief was it was a bullet hole.

Q. Will you describe the hole?—A. It was not a large hole, as I remember; it struck nearly on the corner, on the edge of a brick, and made a hole—oh, probably 2 or 3 inches in circumference or possibly a little more, and possibly an inch deep at its deepest part. This hole might have been larger; I am simply describing it from memory.

Q. Were there any evidences of lead or other metal in the hole you saw?—A. No; I didn't see any.

Q. Was there any indication it had gone out from this; and if so, in what direction—this particular one?—A. I had the impression that it must have dropped out; I could see no evidence of its having penetrated and gone in.

Q. Did you locate the firing point as to that bullet in your investigation?—A. I imagined it must have come from some point diagonally opposite—that is, down in the street—or it might have come from a considerable distance farther away.

Q. You have no opinion on that?—A. No; I have no opinion, except that I think as it struck the corner—and possibly a little more of that which is out of sight—that part of the brick out of sight, in the window side, that it must have come from some point toward the alley. Otherwise I could not tell anything about where it came from.

Q. In other words, you think it was close to the alley and close to Thirteenth street. Is that the idea you wish to convey?—A. I could not be positive of that.

Q. As I understand you, it couldn't have been fired from very far down the alley toward Twelfth street.—A. No; it couldn't have been fired from very far in that direction, but it might have come——

Q. That is, if it struck very far inside the window facing side of the brick itself?—A. If it came from the alley at all it must have been comparatively close, on account of the building there at the corner of Thirteenth street across from the hotel.

Q. That's a high brick building, isn't it, nearly as high as the Miller Hotel?—A. I don't remember how big that building is; I don't think it is as high as the Miller Hotel, but it is a good-sized building. It is a brick building; yes. You can see the marks there (indicating on photograph).

Q. Was there any other bullet holes on that face that you examined and determined were bullet holes?—A. There were three or four, I think four, the first time I was down there that were described as bullet marks.

Q. Did you examine them?—A. I did not examine them from anywhere except the street, and I can't definitely say that they were bullet holes, except they were pointed out to me as bullet holes and I thought it extremely probable they were.

Q. I think you said you saw some bullet hole or holes on the other side, and as I read your evidence—that is, on the alley side—and as I read your evidence it was in one of the back rooms—that is, toward the garrison. Is that correct?—A. On this side?

Q. Yes; on the alley side.—A. There was one bullet hole through

a window screen and window sash. There was one bullet which made holes through the window screen and window sash and the ceiling of the room on the corner of Thirteenth and the alley, second floor.

Q. Did you trace that bullet?—A. Yes.

Q. What did it first go through?—A. Went through the wire screen. Then through the lower part of the sash of the lower half of the window, which must have been up at the time. Then it went through the ceiling——

Q. In that room inside?—A. In that room. It went into a room upstairs.

Q. Do you remember the material that the ceiling and the floor was made of?—A. I know they were wood; that's all I know.

Q. Then where did it go?—A. Into a room on the third floor—at least, I think I saw it where it lodged up in the third floor in a bureau, although I am not positive of that—in a bureau or washstand. I don't remember much about the hole it made, however, in the washstand.

Q. Did you note the difference in the holes, if any, where it penetrated the sash and the ceiling and the floor above, and so on?—A. I don't remember definitely anything about those holes, except that I thought the bullet was of small caliber.

Q. Unless you can recall it we don't want the evidence of it. What window specifically on the second floor did that go through?—A. My impression is that it was the third window from the corner, although it might have been the second. I think there are three windows in that room on the alley.

Q. (Looking at picture.) Only two indicated there.—A. There is another one on the other side of that projection there. That's shown in some other picture. There is another window there you can't see.

Q. It was the rear window from Thirteenth street?—A. I think so, although it may have been the second one.

Q. It is the second one that shows in the picture. Tell us where you located the firing point for that.—A. I judged that that must have been fired—I can show where I thought it came from (going to map on wall). I thought it must have come from a point about there, or possibly a little farther into the street, or it might have been a little closer to the window. I can't tell. I think it was fired from a point in the alley. (Indicated point first in the alley toward the garrison, just inside the mouth, from Thirteenth street.)

The court then took a recess until 2 o'clock p. m., at which hour the members of the court, the judge-advocates, the accused, his counsel, the witness, and the reporter resumed their seats.

CROSS-EXAMINATION CONTINUED OF THE WITNESS, MAJ. A. P. BLOCKSOM.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

The judge-advocate:

Before proceeding I would like to make a very brief statement to the court. For two reasons I wish to repeat some remarks made informally before the court by me this morning. First, because I believe all the members of the court did not hear or did not understand their full import; second, because I believe the reviewing authority should be possessed of the same information in this particular as the court. These remarks were not made a matter of

record this morning. I want to say again that I had at one stage of the trial two witnesses who were present in the Cowen house on the night of the 13th of August. These witnesses were dismissed temporarily on account of serious illness in their family, and I had intended up to this morning to summon at least one of them again, and in view of the remark of counsel that he intended to curtail the list of witnesses he intended to introduce and also the desire of the court in this same particular, I announced that I would not call either of these witnesses unless the court desired it. I would now like to have that appear in the record.

Q. I think we only described one shot on the alley side of the Miller Hotel, and I think with that we finished this morning. Were there two shots in there that you examined on the alley side?—A. Not that I have any recollection of.

Q. And that was the one you were describing on the second floor?—A. Yes, sir.

Q. Third window, which appears to be the second?—A. It was either the second or the third; I don't know which.

Q. You didn't go inside the Starck house at all?—A. Yes; I went inside the Starck house.

Q. Did you examine the paths of these bullets there—you said you saw 4 or 5 bullets, as I understood you, from the outside?—A. From the outside——

Q. Yes.—A. I only saw the marks of 2 or 3, I think, on the inside, but I don't remember that I traced their path.

Q. You don't remember close enough to tell what they went through or what direction they were fired from?—A. I do not.

Q. (Question repeated.)—A. My impression at the time was that they were fired from some point in the street; that is all I remember.

Q. But you can not give us any positive——A. I can not give any detailed statement about them, because I did not examine them very carefully, and my remembrance is that 2 or 3 struck so high that they didn't go into the rooms below.

Q. And you testified that the Ruby Saloon and Tillman's saloon were one and the same?—A. That is my recollection.

Q. Now, you testified to 4 or 5 bullets that went in there?—A. Yes.

Q. Now, will you take up any one of them and trace its course for us? First, where it was hit.—A. One of these bullets was pointed out to me as the one which killed Natus. It struck the wall, which was on the right as one goes in from the rear door, probably 6 or 8 feet from where the point was designated as the one near which Natus fell. This bullet hole was about 2½ feet or 3 from the ground, and, as I remember it, the indentation in the wall was—I don't know that I can describe it—it was slanting where it entered and the point where it stopped the indentation was nearly perpendicular to the surface; that is to say, suppose this was the wall, the indentation was this way, and it was more abrupt—that is, it didn't go that way at all; it went this way and that way (indicating).

Q. That is, it turned to come out, so to speak?—A. I don't know whether it came out or not; there was no indication of the bullet being there.

Q. What kind of a wall was that?—A. A brick wall, as I remember.

Q. Then, if I understand you correctly, it struck that wall and came out; it didn't stay in the brick at all?—A. I don't know whether it stayed in there at all; if it did, it was picked out.

Q. You never saw it?—A. No.

Q. How big a hole did it make and what kind of a hole?—A. The hole was about 2 or 3 inches long and probably a couple of inches high and a couple of inches deep—may not have been quite so large either way.

Q. Was it round or oval?—A. It was pretty hard to describe.

Q. What geometrical figure did it come nearer figuring out?—A. If you will let me make a drawing of it I can show better. (Witness makes drawing.) If that was the wall, suppose the bullet came from that direction, that was a sort of cut it made in the wall, as if you would cut this out—something like that, as I remember. If you cut that all through (indicating edge of leaves as per mark on following page) those leaves would represent something like the cut in the wall. (Drawing made by witness on following page.)

(The figure below, on the left-hand side, is the figure as made by the witness in explanation of the last question on the preceding page, drawn identically from the original.)

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Q. This is the face?—A. No, no; it went into this face. There is the face; it went into that edge and this is what it cut out, something like that.

Q. You don't know personally whether this was dug out or not?—A. I don't remember what was said to have been done about that bullet; I have an indistinct recollection, too, that somebody picked it out.

Q. We don't want it if you don't remember personally. Now, what is the next bullet hole that you recall, or bullet course?—A. There was one bullet which went through one of the windows.

Q. Of the saloon?—A. My recollection is that it went through the glass.

Q. The glass of the saloon proper?—A. Of the front of the saloon fronting on Elizabeth street.

Q. I thought these shots were fired from the alley?—A. So they were, but the window—they went clear through the saloon.

Q. What did it strike before it got to this window?—A. That particular bullet I don't think struck anything, because it seemed to be a pretty clean-cut hole, as I remember.

Q. In the front window?—A. Yes.

Q. You know nothing further about that?—A. No; I don't know where it went.

Q. Take up the next one.—A. Then, as I remember, there was in that right-hand corner of the room, looking toward Elizabeth street—of the front room of the saloon—there was a mark of another bullet very near the corner.

Q. How did that get into the front room of the saloon?—A. I don't know; I remember when I was in there speculating as to whether it could have come from the door—that back door—and if it did come from that back door outside it had a very narrow margin to get around a corner which was there in the inside of the saloon. I remember my impression was that it would hardly have room enough if fired from the outside of that door in the alley.

Q. Did you find any further trace of this?—A. No; I don't know whether that one——

Q. Let me understand you right here and get it of record. You speak of front room—how many rooms were there to that saloon?—A.

As I remember it, there was a front room where the bar was and where white people were supposed to congregate; then there was a bar directly in the rear of this, and there was some sort of a partition between them; I don't think it was a very thick partition—it could not have been perfectly opaque.

Q. Could you make a little ground plan showing the relative size of those rooms, from your recollection, and showing where the bullets went?—A. I don't know whether I can make one perfectly or not.

The judge-advocate:

Mr. Fitch was down there and made a sketch of that place, and you may use that.

Counsel for the accused:

I simply want the witness to say what he knows about it; that's all.

The judge-advocate:

It is in my office; we can send for it if you want it.

Counsel for the accused:

It won't take but a few minutes to send for it. I want to understand the course of that bullet myself.

The judge-advocate:

I will do so.

A. I have made a sort of rough sketch of it—something like I remember of it, what I remember it was. There is the front of the saloon about there; this is the door, I think, about there; that window was here; here was that corner which I have just been speaking of; here was the back door. Now, I don't remember exactly where that cistern was, near where Natus fell. It was somewhere in that vicinity. He fell about here, where that bullet struck, which I have described as being over here somewhere—the one I described just a moment ago as having made that big indentation in the wall. Now, the other bullet I described as going through the window was about there, I think. The bullet which struck about here—I don't know whether it struck this wall or that wall; I think it was this wall; anyway, it was very near the corner—it was questionable in my mind whether a bullet fired from the outside of that door could have gone in that direction without striking that corner.

Counsel for the accused:

Will the court wait a moment or two until we get that plat? It is supposed to be correct, and let us have it marked on there.

The court:

That may be introduced when he gets here.

Q. Now, that is the third shot, I think?—A. That was the third shot. Then, I remember at least one other shot, possibly two—that is, the marks of one other shot, possibly two—striking some boxes that were to the right of the front door as you look out to the front, but I have an indistinct remembrance of what these marks were.

Q. May I interrupt you there? I would like to read your direct evidence on that to refresh your memory. They ask you about the saloon and stated: "What did you find there?—A. I found there

the marks of, I think, 4 or 5 bullets; one entered from the wall to the right of the cistern in the back part of the saloon as you enter from the rear."

A. That is the one I have been describing.

Q. (Continued reading.) "Evidently this bullet had been fired from a point near the doorway. Q. And then what else did you find there?—A. I found the marks of some bullets on a lot of boxes which were in the front part of the saloon, to the left of the door as one enters from Elizabeth street, and I saw the marks of one bullet that had gone through one of the windows in the front, and I think I saw the marks on one or very near the wall, or more near the corner of them. I am not positive about that." Now, you have described the one that struck the brick outside and the one that went through the window and the one that, I understand, went through the door that we dropped the examination of just now.

(Here the witness is handed a penciled drawing of the saloon in question.)

Q. That is supposed to be the cistern?—A. Yes; right there was the cistern; then Natus fell right there. What is the scale there?

Assistant judge-advocate:

That scale is approximately an inch to 10 feet.

A. That can not be right, then, because he only fell a short distance away from the door, not more than 20 or 25 feet. Here is where Natus fell; if it is an inch to 10 feet, he would have fallen 50 or 60 feet from the door, and, as a matter of fact, it wasn't more than 30 feet at the most.

Assistant judge-advocate:

This was very roughly drawn.

A. I think that certainly is wrong, because it certainly wasn't 45 feet from the door that he fell. I may be mistaken about that, but I am pretty sure it wasn't that far. This is the corner to which I refer. As I remember it, this wall ended about there.

Q. Now, whereabouts—where was the pathway of that bullet that you thought couldn't get out? That is to say, show where it went in.—A. If it came from this door——

Q. That is the door leading from the alley into the back part?—A. Into the rear of the saloon. If it came through that door, it was very much of a question in my mind whether it could have reached the point where it did without striking this corner.

Q. Indicating by this corner, the right-hand corner of the saloon as you look toward Elizabeth street and directly on Elizabeth street?—A. Well, this corner is inside the saloon.

Q. The inner inside corner. It must have passed through how many doorways or openings?—A. These openings are indefinite in my mind. I think they were pretty wide.

Q. Now, what is the course of the next bullet? Where were the boxes that you refer to?—A. The boxes—they were on the right of the door as you look toward Elizabeth street, and I think they extended pretty near to the corner.

Q. Have you any definite recollection about any one of those shots that went into the boxes?—A. No; I have not; they were pointed out to me, but I have forgotten how they looked.

Q. You have no recollection about the bullets, or what shape they were in?—A. No; I did not see the bullets.

Q. You testified that you examined those in the Garza house, too, didn't you?—A. Examined what?

Q. The bullet holes in the Garza house.—A. Yes, sir; the house inhabited by Mr. Ygnacio Garza.

Q. Yes; across the alley from the Cowen house?—A. Yes.

Q. Did you trace the course of those bullets?—A. I did of one of them, and there was only one mark of the other one.

Q. That particular bullet didn't go inside?—A. No; that one did not go inside.

Q. What was the course of that particular bullet, the first bullet—I mean the one that went inside?—A. Struck the outside wall, a little above the floor of the corner room of the house, the corner on Fourteenth street and the alley; it was on the alley side that it struck. It went through that wall, and I was shown the leg of a chair which it went through—that is, which it is supposed to have gone through—and the bottom, I think, of the washstand or small bureau which it partially penetrated. Mr. Garza gave me the single piece of what he said was part of the bullet. It appeared to me to be of bent tin.

Q. You couldn't identify the bullet from which it was taken; could you?—A. No; I only know from what I found out afterwards that this was almost certainly a piece of what is on the steel jacket of a bullet.

Q. You couldn't tell whether it was, as far as the part that was shown to you—couldn't distinguish it from the general run of steel-jacketed bullets?—A. Well, it was very similar to the rear end casing of the Springfield rifle bullet which I have seen; it was the same color.

Q. But there wasn't enough there to enable you to swear positively?—A. I can only say that it had a similar round hole in it, which is very similar to the hole in the rear of the casing of the Springfield bullet; it was the same color. It is what is called the steel jacket; it is copper colored, and I believe it is made of what is called cupro-nickel.

Q. Identify those bullets for us, won't you? (Counsel hands witness several cartridges.) Before you do that let me ask you, did you locate the point from which that bullet was fired?—A. No; I don't think I did. That bullet was—I can not describe that very well; I can show it on the map better, I think.

Q. All right, if you will.—A. (Witness goes to map.) That bullet, as I remember it, entered the house about that point; it took a course about something like that (indicating).

Q. It was diagonal, was it?—A. It was slightly diagonal; not to any marked extent.

A member of the court:

I would like to have the witness indicate that again.

A. The bullet entered about here; it came from some point out here, in that direction. That is the Garza house.

Q. What did that penetrate?—A. It penetrated this wall, which was weatherboarding, I think, on the outside, and I don't know what the inside was. It struck a chair about this point, and entered a bureau or small washstand about there. That other bullet must have

come from over here farther and struck the wall about there, the foundation, and made an indentation. That is the only mark of that bullet I saw.

Q. What kind of a chair leg was that that it struck; can you give us an idea?—A. As I remember it, it was something like that chair over there.

Q. An ordinary barrack chair?—A. Yes; an ordinary barrack chair.

Q. It went through the leg of it?—A. It went through the leg of it, and I think it touched some other point of the chair; I don't remember what, but the principal part was on this leg; I think it split the leg.

Q. Can you recall definitely any other part?—A. I am pretty sure it struck some other part, but I do not remember what.

Q. Have you any idea of metal in your mind?—A. No; I think it struck wood.

Q. Do you remember where it struck the bureau?—A. I think it went partially through the bottom of the bureau, and Mr. Garza, as I remember it, said he found these pieces, or this one piece, which was afterwards separated into several. In looking at it I pulled it apart. I think he said he found it on the floor, possibly in this bureau, but my recollection is he said he found it on the floor; but where the rest of the bullet went, I don't know.

Q. You didn't find it?—A. No, sir.

Q. Now, will you identify those bullets and tell what they are? They are in pairs, I think, Major.—A. These two bullets (marked "A") I think are—I only know from what I heard afterwards; that is, after making the investigation—I think these are bullets issued to the guard for guard purposes—Springfield rifle bullets—though I don't claim to know definitely what those lead-colored bullets are. That (marked "B") I think is the reduced-range bullet, used in target practice, though I don't really know what it is; Springfield, I think; at least it has the mark to indicate the Springfield bullet. There are two of them. These are (marked "C") Springfield rifle cartridges; they are made by the Union Metallic Cartridge Company, and I believe have a blunter nose than those made by the Frankford Arsenal. This cut in this cartridge, I don't know anything about that; I don't think it is in the regular cartridge—that is, in the Springfield; it may be in all these guard cartridges, reduced charge, or whatever you call them, but the nose of this bullet seems to me a little blunter.

Q. Than the Frankford Arsenal nose?—A. The Frankford Arsenal bullet; it is more like the Krag. These (marked "D") I think are regular Krag bullets.

Counsel for the accused:

If there is no objection we will introduce these cartridges, Captain Hay, and they are marked, "A," "B," "C," and "D."

Q. Now, the Krag bullet is blunter than the Springfield?—A. All those that I have examined have been, and I have examined them down in the company ordnance storeroom.

Q. I notice that you say so in your direct evidence here, in looking over that, and I wanted to make sure of that.—A. Yes. I would like to add something to my testimony.

Q. Certainly.—A. I think that short cartridge is what is called "gallery cartridge," used for gallery practice.

REDIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Major, I want to ask you a question about the so-called Purdy investigation. In taking the testimony before this investigating committee was every word taken down by a stenographer, or were only the salient points culled out and reduced to the form of an affidavit?—A. My recollection is that every word was taken down by a stenographer; at least it was in my presence; I was not there all the time.

Q. Now, you said you did not investigate the Evans and Tate affairs further than to get at the feeling of the soldiers, and that Major Penrose and Captain Macklin told you what this feeling was?—A. I don't think I said that exactly.

Q. (Reporter reads previous question.)—A. Feeling between the soldiers and citizens is what I meant to say.

Q. Now, will you tell us what Major Penrose described as this feeling?—A. Well, he described only his resentment at the manner in which the men had been treated in this Tate-Newton affair for one, I think the Baker-Reid affair for another, the refusal of barkeepers to allow men to drink at the bar with white people, the Tate-Evans affair——

Q. The Tate and Evans affairs?—A. I mean simply the Evans affair. And he expressed his own resentment only, however.

Q. Did you ever have occasion to inspect officially the Twenty-fifth Infantry?—A. Before this time?

Q. Yes, sir.—A. No.

Q. How did you get your impression that they were a well-drilled and well-disciplined command if you never inspected them officially?—A. Well, I got it probably from seeing them and probably from reading about them, and possibly from hearing the officers themselves speak about the regiment while I was there.

Q. You did not derive this information first-hand?—A. I think probably I did before I went there, but I can not remember where or when; I know I had the impression that it was a good regiment.

Q. Now, let us come down to the matter of this solitary confinement business. Will you tell me whether or not there are a lot of old barracks or something over on the east side of the reservation?—A. Well, there was an empty barracks east of C Company which was not used at that time.

Q. I am asking as much for my own information as that of the court. Wasn't at one time Fort Brown considerably larger?—A. Yes; there were quarters for artillery and cavalry.

Q. Are they still on the reservation?—A. Yes, sir.

Q. Are they still being used?—A. Yes; a good many of the houses are being used as quarters for noncommissioned officers and men, the barracks are used for storehouses.

Q. Could not some of those buildings have been used for purposes of solitary confinement?—A. I think they could; those barracks could have been used for that purpose.

Q. Now, you made a statement which is before the court that you thought the call to arms was sounded too early during the firing to be genuine; then you were asked by counsel for the defense if you knew Major Penrose had given an order for the sounding of this call to arms you would change your opinion in that respect.—A. Providing the order had gotten to the sergeant before he blew the call, before he had the call blown.

Q. But if you knew the call was blown before the order was received, would you still change your opinion?—A. No; I would not.

Q. How long were you in Brownsville altogether, Major—about how many days?—A. The first time?

Q. Altogether, both times, especially the first time?—A. The first time I was there from the night of the 18th of August until the morning of the 4th of September; that would be about sixteen days, nearly sixteen days.

Q. During those sixteen days did you ever see anyone on the streets wearing soldiers' uniforms?—A. I don't believe I ever saw more than half a dozen people.

Q. What class of people—that is, men, women, or children?—A. It seemed to me they were principally boys, and possibly Mexicans.

Q. What articles or uniform predominated, if you remember?—A. I don't think any of them predominated; they had one or two articles of clothing that I saw. There were not any of them completely dressed.

Q. In what condition of this uniform—that is to say, was it new or otherwise?—A. It wasn't new; it was old.

Q. What might be called unserviceable or not?—A. I should say so.

Q. Now, you made an answer to a question about the officer not giving you information as to examination of ammunition, and you stated that this was negative; counsel asked if that was not negative; you answered yes. Do you want to add to or amend that answer in any way?—A. It was negative, of course, in a measure, but it indicates to me now that they should have, or it seems to me now it was their duty, to tell me if they had made such an investigation.

The judge-advocate:

Before proceeding further with the examination of this witness I wish to make a statement to the court, which, of course, is not evidence; it is merely a statement of the prosecution, that in view of the fact that this witness, as well as have several others, has testified concerning the finding of shells, bullets, and other articles of like nature in Brownsville, the court may be possibly mystified why these articles are not introduced now as evidence before this court. I wish to say to the court that the prosecution has made two attempts to secure these articles, such as bullets, shells, etc., but has been informed by the officials at Washington that they are now in the hands of the Senate committee, which is investigating the so-called Brownsville affair, and are not, therefore, available for evidence before this court.

QUESTIONS BY THE ASSISTANT JUDGE-ADVOCATE.

Q. With reference, Major Blocksom, to the last question on page 1379 [652] of the record, viz, "Are you sure they did not tell you that they hadn't done this?" to which your answer was "No." Do you desire to make any further statement on that point—this is merely to correct an error in the record.—A. I think that is an error in the record. At least, on reading it over I know that to the best of my

recollection they never said anything to me about the matter. My answer should have been "Yes."

Counsel for the accused:

Will you make it clear—the connection?

Q. I will read the previous question. The previous question was, "Did you make a personal examination of this evidence and the conditions there to find out whether they had made an honest effort to ascertain whether this ammunition had been secured from their supplies?—A. No; I made no effort, because I was convinced they would have told me they made such an effort before this thing occurred." Then followed the question which has been just changed by the witness. In the next to the last question, on page 1386 [655] of the record, with reference to one of the bullets that entered the Yturria house—in fact, the bullet that went into the cistern on the farther side of the house—the question is, "How much lower than the lintel was the point where it entered the house proper?" The answer is, "Possibly 2 or 3 inches; not quite so much, possibly." Is that as you wish to leave it?—A. I understood the question to be just the opposite of what it is.

Counsel for the accused:

That was the intent.

A. That is, the hole in the wall was lower than the lintel. That should have been the effect of my answer.

Q. For your answer to be proper, how would that question have to read?—A. The question is, How much lower was the lintel than where the point it entered the house proper, and my answer would be not lower at all. The lintel was 2 or 3 inches above the point where the bullet entered the house.

Counsel for the accused:

In this connection I will state to the court that the intent was to locate the bullet hole with respect to the lintel. The stenographer must have gotten it wrong.

A. If that is true, I want to correct that, too. When I originally testified about that hole I think I said it was 2 or 3 inches lower than the line of sight through the groove. That would make it still lower—below the level of the lintel—because the line of sight from the groove was slightly downward.

Q. On page 53 of the pamphlet, entitled "Discharge of Enlisted Men of the Twenty-fifth Infantry, Brownsville Affray," appears telegram marked "B′," which has been introduced in evidence and in which the following sentence occurs—this telegram, by the way, is the one sent by Major Blocksom, dated August 20, 1906, and addressed to The Military Secretary, United States Army: "Although act probably preconcerted, do not think commanding officer could have foreseen it." Will you state whether you meant by that this particular act or he could have foretold there might have been trouble?—A. I meant this particular act of the shooting, as I think I reported the act to be.

Q. In the cross-examination, Major Blocksom, it was brought out that you made some statements with reference to a report that you heard about, alleged to have been made by a corporal of C Company

to the effect that he had seen some men across the street the night of the 13th, or, rather, early in the morning of the 14th. I would like to know what the basis was for that belief, whether it was from information received from Major Penrose at that time or have you formed it since?

Counsel for the accused:

We object to any answer to it until the record has been referred to. We didn't bring out anything, as I recall, where he talked to this man, and my recollection is very clear. We did bring out the fact that a certain corporal did report, or was sent out to examine the post, and he was of Company C; but I can't recall any such examination or evidence as has been quoted there.

Assistant judge-advocate:

If the counsel's objection is only to the form of the question——

Counsel for the accused:

That is all.

The assistant judge-advocate:

I will change it, and ask Major Blocksom what his basis was for any statement that he made in here with reference to that corporal of Company C, whether it was reported to him by Major Penrose at the time or whether his impression was formed from reading affidavits in the various reports that have been reported since then?

Counsel for the accused:

We object to that question. We can't recall a scintilla of evidence about any corporal saying any such thing.

The assistant judge-advocate:

We will withdraw the question temporarily until I can look up the record about it.

A. I think that question referred to this man——

Q. Wait, that has been objected to. How many cells are there in the guardhouse, to the best of your recollection?—A. I don't recollect that perfectly, and I only know it now from Colonel Lovering's report, a copy of it which is in that report.

Q. Did Major Penrose, while he was in Brownsville, ever claim to you that persons other than soldiers might have committed the shooting on the night of the 13th of August?—A. He did not.

Q. Did Major Penrose ever claim to you that the first roll call was at all accurate?—A. He did not.

Q. Did Major Penrose ever state to you that he had given any instructions to the officers relative to their keeping in their possession the keys to the gun racks in which the rifles were placed on the night of the 13th of August and the time the inspection was made?—A. No.

Q. Are you certain that the residue remaining in a Springfield rifle barrel after a dozen or more shots had been fired from it could not be readily detected in the night by the aid of an ordinary lantern?—A. I am not certain.

Q. How many staircases are there, Major, leading down from the upper room or squad room in Fort Brown, and where are those stairs located, to the best of your remembrance?—A. My recollection is that the main staircase is in the middle of the building leading down to the front—that is, to the parade ground. There

are, I am sure, one back stairs, and I think there are two leading out from the porches. Of that I am not sure.

Q. So that it is easy to gain the second story of the building either from the front or rear?—A. Yes; that is my recollection of it.

Q. Now, with reference to the shooting near the Leahy Hotel and the Cowen house or cottage: Were there any evidences on other nearby houses of bullets having been fired from the inner section of Fourteenth street on the alley?—A. I was shown the marks of one or two bullets either on the rear of the house at the back of the Leahy Hotel, which was a part of it, or else on the wall leading back to the alley from that house, but I have an indistinct remembrance of how it was located or whether they really were shot holes.

Q. But with reference to any other house near that corner?—A. Well, there were marks in the house of Ygnacio Garza, across the alley from the Cowen house.

Q. And from what points must the bullets that made those marks have been fired?—A. They were fired, as I stated a while ago——

Counsel for the accused:

That question had been answered directly.

A. Yes, sir; I answered that.

Q. These points can be seen from windows of the Leahy Hotel, can they?—A. They can.

Q. How many stories in the Cowen cottage or house?—A. Only one.

Q. About how high is the ridge of the roof from the ground?—A. I should say about 15 feet.

Q. And about how far from the nearest point of the roof ridge of this cottage is it to the inner section of the northern line of Fourteenth street and the Cowen alley?—A. You mean to the top of the roof?

Q. To the top of the roof.—A. Well, I am only guessing at that; I think that street is 50 feet wide. I should say it is 70 feet from the north line of Fourteenth street.

Q. So that a rifle fired at that point the bullet would have to rise only 15 feet in a vertical direction in going 70 feet in a horizontal direction to clear the house?—A. I should say that is very near it.

Q. So that the rifle would not have to be pointed upward at very much of an angle to have the bullet go above the house?—A. Only 15 on 70 feet, about.

Q. With reference to the bullet that you took out of the dining-room door in the Yturria house, will you please state whether the hole from which you extracted that bullet could have been caused in any way other than by that bullet itself?—A. In my opinion it could not. That bullet, I am certain, was fired into that door.

Q. And that bullet was what kind of a bullet?—A. It was a Springfield rifle bullet.

The assistant judge-advocate:

With reference to that other question, I desire to state that if it is necessary, in the meantime we will look it up in the record, and if it is necessary we will recall Major Blocksom.

Counsel for the accused:

If it is a matter to be straightened up, that is all right.

RECROSS-EXAMINATION.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. In what way did Major Penrose give the impression to your mind that he was suppressing matter connected with the investigation?—A. Suppressing it?

Q. Yes; the question that he had investigated the ammunition.—A. I don't think he was suppressing it; I didn't so say.

Q. Don't you think Major Penrose told you fully and freely about what he was doing to check this matter up?—A. I do. I didn't say in my examination that he was suppressing it.

(The reporter was requested to read the following question and answer by counsel for the accused: "Q. Now, you made an answer to a question about the officers not giving you information as to examination of ammunition, and you stated that this was negative. Counsel asked if that wasn't negative; you answered yes. Do you want to add to or amend that answer in any way?—A. It was negative, of course, in a measure, but it indicates to me now that they should have, or it seems to me now it was their duty to tell me if they had made such an investigation.")

A. I simply meant to say that it was my belief they hadn't made it on that account, because they didn't tell me.

Q. Are you prepared to say that Major Penrose didn't tell you that he caused an examination to be made of his ammunition in those numerous conversations you had; that he never mentioned that fact?—A. I mean to say that he never told me that he made an examination of surplus ammunition, to which I think this question referred, before that firing; that is what I mean.

Q. Oh, before the firing?—A. Before the firing; that is what I referred to entirely in that answer. My reference was as to the fact whether the officers had examined the men—their personal possessions—to find surplus ammunition in their possession before the firing began. That is entirely what I meant.

Q. That is an entirely different matter.—A. I didn't refer to after the shooting at all, and I think if you will go through the original examination, or your own cross-examination, you will find the questions before that will indicate that.

Q. At least, that is what you had in your mind?—A. Yes. I didn't mean to say that he never made any examinations afterwards.

Q. Then, in your examination before the General Staff, and to which our question lay, you had in mind the same thing?—A. Exactly the same thing; in my answers, which I made clear to the General Staff, and in which I have tried to make clear before this court, and which I did not succeed, if you will pardon me for expressing myself.

Q. Major, you don't want to go on record as indicating about these keys that it was the duty of the major in command of the post to interfere with the internal economy of the company as to who should carry the keys to the armracks?—A. I simply referred to it, to a matter of the custom.

The judge-advocate:

If you remember, that was objected to and not asked.

The court:

That question was withdrawn.

Counsel for the accused:

We are glad enough to have it stricken out.

Q. We will let the same question to the general internal economy of the company remain; you don't look to a post commander to look after all these details?—A. Certainly not.

Q. And you certainly don't want to go on record as intimating to this court that a large number of that command, with one-third of them on guard, could establish a separate and distinct guardhouse over in an old barracks and confine a large portion of them, everything considered, there?—A. I simply answered the question.

Q. You don't want to create that impression, that it was a practicable scheme at that time?—A. That was simply a belief on my part. I simply said that there were such buildings. I did not express an opinion on it.

Counsel for the accused:

I would like to ask the judge-advocate if he has any plans to introduce showing the barracks?

The judge-advocate:

I haven't any now.

QUESTIONS BY THE COURT.

Q. When you alluded to coercive measures in your report, did you consider at all that in detection of criminals or conspirators one method not infrequently used is to allow suspects to remain at liberty, as offering more chance of detection through their mingling with others, mutual conversations, etc.? In other words, did you have in mind not only the measures you thought should have been adopted, but also this other one? And if so, please state reasons, as determined by your investigation, why the method of coercive measures you think should have been adopted was plainly the correct one in this case.—A. Well, I can only judge what I thought, myself; I don't know what the general practice would be. I think isolation in such a case would be the best. I may have been possibly influenced in this statement at the time by the fact that I have always heard that colored men are more secretive than others in such criminal matters as the one under question. I considered that the longer they were without such coercive measures the more apt they would be to form definite plans for concealment of the crime.

Q. As to the bullet holes to which you have testified: Did the amount of material passed through by the bullets making such holes indicate sufficient penetration for a service bullet of the Springfield rifle?—A. That I can hardly answer, because I have never seen tested the power of a Springfield rifle bullet. I only know from what I have heard that it is a very powerful rifle.

Q. As to soldiers having on hand usually ammunition obtained in various ways, do you know during how long a time the soldiers of the battalion of the Twenty-fifth Infantry were enabled to accumulate such ammunition of the Springfield service type; in other

words, during what length of time prior to August 13 had they been armed with Springfield rifles, and had they been to target practice with these same rifles?—A. I heard, I think, while I was there that they had had target practice with these rifles, although some other witness will have to be asked on that point positive; I don't know. Some other witness will have to testify positively on that.

REDIRECT EXAMINATION.

QUESTIONS BY THE ASSISTANT JUDGE-ADVOCATE.

The assistant judge-advocate:

I would like to state that I have found what I was looking for here in the record.

Q. I will read from the bottom of page 1338 [632], from the cross-examination of this witness: "Did you learn nothing about any inspections that he had made around the post during that period?—A. Yes; there were some inspections made which I had forgotten about—at least, there were some reported, whether by his order or not, I don't know, however. Q. Did you know at any time, do you think?—A. These lines of defense that were formed were composed of different companies, and there were some reports sent in about things that had been found out; one of them was—— Q. Well, I don't care for that unless it relates specifically to the question.—A. As I remember it, some corporal of C Company reported that he had seen a number of men out in the street opposite D Company barracks. Q. Some corporal of C Company reported that he had seen men where?—A. Out in behind the wall in the street opposite D Company. Q. That is the one next the river?—A. Yes, sir. Q. When was that reported to Major Penrose?—A. As I remember it, that report was made about half past 1." Now, Major Blocksom, with reference to the report as to those men having been seen out in the street opposite D Company barracks, is your belief with respect to that formed from actual reports made to you on the ground by Major Penrose or by officers in his presence, or has it been formed since by reading printed affidavits, etc., in the various reports on this affray?—A. I don't know, but my recollection is that this report was not made by any patrol. It was simply made by the men out somewhere on the line of defense, but whether I got it from the affidavits or from conversations made to me at the time I don't remember. I know I have read it somewhere in the reports.

Q. You remember having read of this?—A. Yes.

Q. Well, do you remember of anyone having told you of this while you were down there?—A. I do not; but I do not intend to deny that they did not tell me of it. I do not recollect it, whether it was from one of the other sources——

Counsel for the accused:

The witness covered that in the subsequent answer on the same subject.

Q. So you do recollect having read about it, but you are not sure whether anyone told you about it when you were down there or not?—A. Yes: I recollect having read about it, but I don't recollect whether anybody told me.

(Excused.)

The court then took a recess until 3.55 p. m., at which hour the members of the court, the judge-advocates, the accused, his counsel, and the reporter resumed their seats.

José P. Brown, corporal, Company B, Twenty-sixth U. S. Infantry, was then duly sworn by the judge-advocate as interpreter.

JOSÉ MARTINEZ, a witness for the prosecution, being duly sworn through the interpreter, testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

The judge-advocate:

I will state to the court that this witness has a slight—I don't know how correct—knowledge of English. I have been conversing with him myself in English, and I asked him if he needed an interpreter before the court and he stated if the court would allow it he would certainly like to have his answers interpreted, that his knowledge of English is far from perfect, and that he gets confused.

Counsel for the accused:

We would like to ask if this is José Martinez?

The judge-advocate:

Yes, sir.

Counsel for the accused:

And we would like to ask if he hasn't been examined by the Citizens' Committee and the grand jury and before the Purdy-Blocksom investigating committee?

Judge-advocate:

He has, I think.

Counsel:

And if it isn't a fact that he waived all that in those examinations?

Judge-advocate:

I know it is a fact in the Purdy investigation, and I think it is a fact in the other cases; I am not certain. It reads here "interpreter dispensed with."

Counsel for the accused:

With a full knowledge of the degrees of arriving at the truth through an interpreter in any examination we will have to object to the use of an interpreter, unless the court insists upon it. He has been examined judicially twice and by the Citizens' Committee, and distinctly waived it in each case, and if he can talk it well enough for them and for the grand jury and for Mr. Purdy, we think we have the same rights to know and to test his veracity now and in the same way as then. We think it but fair that we be placed in the same position that they were.

The judge-advocate:

I had no purpose whatever in introducing the interpreter, except simply in reading over the testimony he has given here before I find in a number of places that it was not quite intelligible to me, and knowing from experience in this trial that some Mexican witnesses do flounder in their testimony I thought it fair to the court and the defense, as well as to the prosecution, to let him have as much latitude as we could.

A member of the court:

Mr. President, I would like to move that the interpreter be not required to translate, except when the case might arise; that the examination be conducted in English, except those parts that are not understood.

The accused, his counsel, the judge-advocate, the reporter, the interpreter, and the witness then withdrew and the court was closed, and, on being opened, the presiding officer announced, in their presence, as follows:

I am instructed by the court to announce that the objection to the employment of an interpreter is not sustained.

Q. What is your name, your residence, and your occupation?—A. José Martinez; Brownsville, Tex.; druggist.

Q. Where were you living on August 13, 1906?—A. In Brownsville, Tex.

Q. I asked where he was living on August 13, 1906; I think you said on the night of August 13, 1906.—A. He said he was living in his house; that it is not indicated on the map. The alleys in Brownsville have no names.

Q. But you were living in Brownsville on August 13, 1906?—A. Yes, sir.

Q. Where were you on the night of August 13?—A. In his house.

Q. Will you point out on the map the location of your house, if you can?

(Witness goes to map.)

(Judge-advocate: Witness here indicates the house at the corner of the Cowen alley and Fifteenth street, directly behind B Company's barracks.)

Q. Did anything unusual occur on this night; if so, what?—A. Yes; there were some shots in the town.

The judge-advocate:

Just at this point—or, rather, I should have stated this before—I wish to state this is the witness, José Martinez, about whom I spoke to the court in the early days of the trial as being in Mexico, and that I was unable to bring him before the court. Since that time he has returned and is residing in Brownsville, and it is for this reason that he is introduced at this time, although the judge-advocate stated he would not introduce him, and it was because before this time I could not serve a subpœna on him.

Q. Now, you said there were some shots fired in the town?—A. Yes, sir.

Q. In what direction were these shots from—that the sound of these shots come from?—A. Some come from the direction of the corner of his house in town.

Q. Which corner?—A. The corner to the alley.

Q. What were you doing at that time?—A. He was reading in his room.

Q. Had you gone to bed when you heard these shots?—A. He had not; he was sitting in front of the open door with a light.

Q. What were you doing?—A. Reading.

Q. Now, tell us a little more particularly from what direction these shots came—the first shots came.—A. He said the direction—he can't say—but the first shots were in front of his door—about 30 or 40 feet distance from the front of his door.

Q. Were they fired in the street?—A. He can't say exactly, but it sounded like they were inside the quarters.

Q. By the quarters do you mean the building itself or inside the reservation line?—A. Inside of the wall.

Q. How many shots did you hear fired at first?—A. He can't say, but from 4 to 6 at one time.

Q. Did you hear any words spoken about this time?—A. At the time of the firing—no, sir.

Q. Did you hear any words spoken afterwards?—A. About ten or fifteen seconds afterwards he heard a voice from some person.

Q. What did this voice say?—A. In general, they were saying something like this: "Hurry up; jump."

Q. Were these words spoken in English, as you have spoken them?—A. Yes, sir; they were in English.

Q. Well, did you see anybody that did jump?—A. He heard the sound, but he couldn't see precisely.

Q. Where did this come from?—A. All came from the direction of the wall.

Q. Did the light from your room shine brightly or not?—A. Yes, sir; it was a very strong light.

Q. Was it in such a position to shine out on the road or not?—A. Yes, sir.

Q. Which way did the door of your house face—that is, upon the alley or upon Fifteenth street?—A. Fifteenth street.

Q. Now, you said, I believe, that you didn't see these men. Do you mean by that you didn't see their faces, or did you see their forms at all?—A. He didn't see the faces, but saw the figures like they were running.

Q. About how many of these figures did you see?—A. He thinks he saw from 15 to 20, more or less.

Q. Where did these men appear to be running toward—that is, in what direction were they running?—A. He supposes that some ran to Elizabeth street and some to the alley; he is sure that some ran toward the alley.

Q. Now, when you saw these figures jumping to the wall, how far away were they?—A. You mean one from the other?

Q. How far away from you were they?—A. About 35 feet, more or less. That is the distance from the door of his house to the wall.

Q. Now, how many shots had been fired before these men jumped?—A. About 4 or 5.

Q. Now, the time you saw these men—rather, immediately after you saw these men, some running toward the alley and some running toward Elizabeth street—what did you do?—A. He put the light out and laid on the floor and closed the door.

Q. Did you hear any voices as these men jumped?—A. He heard some, but he couldn't tell what it was.

Q. Could he tell whether they were speaking Spanish or English?—A. No, sir; he couldn't say.

Q. Did you hear any shooting after you lay down?—A. Yes, sir.

Q. In what direction?—A. In the direction of the alley, toward the center of town.

Q. But just before that had you heard any others?—A. He heard some in the alley near his house shooting where he supposed toward town.

Q. Did you look out?—A. Yes, sir; he was by the rear window.

Q. What did you see?—A. He saw some men firing with rifles—carbines.

Q. Could you tell what kind of men these were?—A. Yes, sir; he could tell they were negroes.

Q. How far is the window from which you looked from the center of the alley?

A member:

I don't believe he translated that correctly.

Q. (Question repeated by interpreter.)

A. About 15 feet, more or less.

Q. How were these men dressed?—A. Clearly of color; dressed clearly.

A member:

He said "vestidas claros."

Q. Tell what you mean by being dressed clearly.—A. It was a dress that he could see in the darkness.

Q. Can you describe it?—A. No, sir; I couldn't describe it.

Q. You say these men were firing—in what position were they holding their guns, if you remember?—A. Do you want me to give the position?

Q. Yes.—A. They were holding their guns in that way.

(Judge-Advocate: Holding the right hand a little to the right of the center of the body, the forearm nearly horizontal, the left arm extended; witness assuming a position slightly oblique.)

Q. Now, you have stated that after these men passed your house you heard what you thought was shooting in the alley in the direction of town; how far away did this next shooting appear to be, from the sound?—A. It is impossible for me to say.

Q. After this firing had passed your house, did you leave your house until the following morning?—A. No, sir; I stayed there to sleep.

Q. About what time did you go to sleep?—A. I went to sleep about a quarter after 12 or half past 12, more or less; I can't tell.

Q. If you haven't already done so, tell as nearly as you can the time you heard these first shots that you spoke of.—A. I think it was very little after 12 o'clock. I think it was about five or eight minutes to 12, because I looked at my watch about ten minutes before 12.

Q. Have you ever given any testimony about events of this night to anyone?—A. I have talked about that more or less, but I haven't given testimony.

Q. I do not mean conversations with friends on the street, or anything of the kind, but official testimony?—A. I gave it to the Citizens' Committee and to that Mr. Purdy that was in Brownsville.

Q. When did you testify before the Citizens' Committee?—A. I think it was the 14th or 15th; I know not the date exactly.

Q. Either the first or second day after the events?—A. Yes, sir.

Q. Did you hear any bugle call sounded?—A. Yes, sir; I heard.

Q. Well, was this before the first shots or after?—A. Very little after.

Q. Can you tell about how long afterwards?—A. Three or four minutes; I could not tell precisely.

Q. Did you hear more than one call?—A. I heard different calls. More calls about four or five minutes afterwards.

Q. During the night of August 13 had you heard a sound of any shots from the direction of the town before you heard these shots in front of your house?—A. No, sir.

Q. Did you see these men after they had passed down the alley and out of your sight again that evening?—A. No, sir; I didn't see them.

Q. If you have not already done so, tell us how far it is from the garrison wall to your front door.—A. It must be about 30 feet.

Q. Did you hear any shots after the bugle calls?—A. Yes, sir; I heard them.

Q. About how many shots did you hear?—A. All of the time?

Q. After the bugle calls.—A. I heard many; I couldn't tell exactly.

Q. Now, when these men were passing by your house in the alley, going in the direction of town, in what formation were they?—A. They were not very straight. There were but 4 or 5 in that position.

Q. Did they seem to be under the leadership of anyone?—A. No, sir; not at all.

Q. Were these men all dressed alike?—A. All were dressed clearly, but I couldn't tell if they were the same.

Q. By clearly do you mean light-colored clothes?—A. Claro; I want to say the color of this mister here, or a light color (indicating service uniform).

Q. Do you know whether or not there was a signal [sentinel] who walked behind the barracks usually at Fort Brown at night?—A. No, sir; I do not know of any orders; I do not know anything about that. I do not know anything about what was going on inside the quarters.

Q. Had you heard anything else—any other sounds—from the direction of the barracks just previous to this first shooting?—A. No, sir.

Counsel for the accused:

He didn't translate all that.

Q. (Question repeated by interpreter.)

A. By other sounds do you want to say the sound of people?

Q. Any kind of sounds.—A. I heard a sound like a wagon behind going slowly.

Q. On which side of the garrison wall?—A. Upon the inside.

Q. How long before the first shots did you hear the sounds of this wagon?—A. Immediately after the first shots were finished.

Q. Please go to the map and point, if you can, where, from the sound of this wagon, it must have been immediately after the first shots.—A. (Witness goes to map.) That is the wall, I think; I heard it about 40 feet, more or less, from the wall.

Q. About in the center of B Company barracks?—A. Between the barracks and the wall.

Q. But with relation to the two ends of B Company barracks; that is, the barracks immediately in front of your house. Was it toward the east end or the west end or near the center?—A. Which one is B Company?

Q. Company B is the company barracks in front of your house.—A. I can feel sure that it was in front of my house.

Q. The sound was almost in front of your house?—A. Yes, sir; nearly in front of his house.

Q. Could you tell from the sound in what direction that wagon then moved?—A. It came from the direction of Poncho Turrias until it stopped inside the quarters in front of my house—from southeast south.

Q. Indicate on the map.—A. (Witness indicates on the map.) In that direction it was coming.

(Judge-advocate: Following a line between the barracks and the garrison wall coming from C Company toward B Company; coming from east to west.)

Q. Where was the sound of this wagon when you first heard it?—A. It was at the point I have just indicated; it was going, and I could not tell where it started.

Q. You don't know, then, in what direction it went after passing your house?—A. No, sir; I did not hear it then.

Q. But you know it passed after the first shooting?—A. Yes, sir; it stopped at the first shots.

Q. After the shooting, then did you hear this wagon after the first shots?—A. No, sir.

Q. And you didn't hear it go any farther?—A. No, sir.

CROSS-EXAMINATION.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. How old are you, Mr. Martinez?—A. Thirty years.

Q. Are you an American citizen?—A. No, sir.

Q. Where have you lived this thirty years?—A. Twenty years in Mexico and ten years in the United States.

Q. The last ten years in the United States?—A. Yes, sir.

Q. Have you gone to school in the United States?—A. No, sir.

Q. In your position down there do you transact business with both Americans and Spanish—or Mexicans?—A. In Spanish and very little English.

Q. Isn't it a fact that you gave your testimony before the Citizens' Committee in English?—A. Yes, sir; it was true that I testified, but I answered "Yes" or "No" to those parts because I couldn't understand English.

Q. Did you tell the committee that you couldn't understand it?—A. To both committees.

Q. What is the other committee he refers to?—A. The Citizens' Committee and Mr. Purdy.

Q. Didn't you testify before the grand jury?—A. Where was the grand jury?

Q. In Brownsville.—A. Yes, sir; in the court.

Q. Did you testify in English or Spanish there?—A. In English and the same way I did to the rest.

Q. And in the same way before Mr. Purdy?—A. Yes, sir.

Q. Did you understand the questions that Mr. Purdy asked you?—A. I understood it because they repeated it to me several times.

Q. You didn't answer all these by "Yes" or "No," did you?—A. The majority I answered "Yes" or "No," and the other not.

Q. Isn't it a fact that you answered a good many questions before the Citizens' Committee in some other way than "Yes" or "No?"—A. Yes, sir; I could give the definition in English helped.

Q. Were not a great many of your answers before the Citizens' Committee given otherwise than in the monosyllables "Yes" and "No?"—A. Yes, sir; there were several.

The judge-advocate:

I don't think that the answer was translated properly, or recorded properly, when he used the word "ajudado."

A. Yes, sir; he said "ajudado"—helped.

Q. And a great many of your answers before the court, the civil court, were given in English in answer to questions propounded in English, were they not?—A. Yes, sir; there was several—the English like I could speak.

Counsel for the accused:

We ask the privilege, may it please the court, of cross-examining this man in English.

The presiding officer (to judge-advocate):

Referring to your statement, Mr. Judge-Advocate, the court would like to know what you expected to prove by this witness to which you referred in your statement about the Cowen alley?

The judge-advocate:

I think I can answer that without prejudicing the case in any way. I expected to be able to prove by these two witnesses—by one, a little more fully, about the condition of the house after the firing——

The presiding officer:

The witness will please step outside.

The judge-advocate:

And by the other what this witness saw at the moment the house was being fired into. One, I think, went to the window and looked out at the very moment, and, as long as this point has already been touched upon in the testimony, the other witness, the one to which I first referred, was the witness who picked out a bullet testified to by Major Blocksom.

The accused, his counsel, the reporter, and the judge-advocate then withdrew and the court was closed, and, on being reopened, the presiding officer announced, in their presence, as follows:

I am instructed by the court to announce that the court grants the request of the defense, but the interpreter will remain in court to be used when considered necessary by the court.

The court then, at 5 o'clock p. m. March 4, adjourned to meet at 10 o'clock a. m. March 5, 1907.

CHAS. E. HAY, Jr.,
Captain, Acting Judge-Advocate, Judge-Advocate.

THE PENROSE COURT-MARTIAL—Continued.

PART 5.

MARCH 5, 6, 7, AND 8, 1907.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., March 5, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocates. The accused, his counsels, and the reporter were also present.

Corpl. José P. Brown, Company B, Twenty-sixth Infantry, was reminded that he was still under oath as interpreter, and he then cautioned the witness, JOSÉ MARTINEZ, that he was also still under oath.

CROSS-EXAMINATION CONTINUED.

The judge-advocate then informed the witness as follows:

By direction of the court, questions and answers thereto will be in English as far as possible.

Q. How many rooms in your house?—A. Three rooms.

Q. Where do these rooms face—in what direction? In what position are these rooms with respect to Fifteenth street? Are your rooms on Fifteenth street or not?—A. Yes, sir.

Q. How many of these rooms are on Fifteenth street?—A. Two.

Q. How many doors enter these rooms from Fifteenth street?—A. One door in front.

Q. In which room is this door?—A. North room.

Q. By north room do you mean the room toward the telegraph office or on the other side?—A. On the other side.

Q. How far is your house from the street?—A. About 5 feet.

Q. Have you a porch on your house toward Fifteenth street?—A. I don't know what porch means.

Q. Portico—gallery.—A. Yes.

Q. How wide is this gallery or porch?—A. About 3 feet.

Q. And from the porch to the sidewalk is how many feet?—A. About 5 feet in some places and another place is 3 feet.

Q. Is there a fence in front of your house?—A. Yes, sir.

Q. What kind of a fence is it?—A. Wood fence.

Q. Is it a solid fence or picket fence?—A. I don't know what a picket means.

Q. Are the boards close up together?—A. No, sir.

Q. Which room do you use for a bedroom?—A. The back room.

Q. The one toward Elizabeth street?—A. No, sir.

Q. Which one; the one toward Fourteenth street?—A. No, sir; it is the back room toward the Cowen house.

Q. Is that against the alley or on the other side of the house?—A. Is only one room back there.

Q. Will you go to the map and show us? That's your house, is it not (pointing to No. 9)?—A. Yes, sir.

Q. Which is your bedroom? Where is it; what corner?—A. This corner (pointing to northeast corner).

Q. And is there a partition running through the center of the house from the alley toward the telegraph office?—A. Yes, sir.

Q. How wide is your house?—A. About 15 feet.

Q. The entire width is 15 feet from there to there?—A. Yes, sir; more or less.

Q. It is indicated there almost as wide as the alley. Isn't the alley 36 feet wide at your house?—A. I think more or less; I don't know.

Q. Were you not told, on your original examination before the Citizens' Committee, that the alley was 36 feet wide?—A. No, sir; I said 30 feet, more or less.

Q. Is this colored stuff there—that brown stuff—is that garden, or what is it?—A. A little garden; yes, sir.

Q. Now that you have looked at it on the plat, does it show fairly how much yard and how much house?—A. Yes, sir.

Q. The proper proportions are there of house and yard?—A. Yes, sir.

Q. Then isn't it more than 5 feet from there to the front gate?—A. I don't think it is more; I can't tell.

Q. Show us whereabouts the front door of your house is.—A. Right here; a little this way.

Q. Near the center—a little east of the center, eh?—A. Yes.

Q. How large is the room in the southeast corner?—A. In here?

Q. Yes.—A. It is about 15 feet, or 5 yards.

Q. Fifteen feet on each side?—A. From here—this way.

Q. How deep is that room the other way?—A. This way? About 9 feet.

Q. And then this bedroom, which is back of that, is only 6 feet wide?—A. About 6 feet wide.

Q. What do you use the rest of the house for?—A. We use this for a reading place. This room—another fellow was with me—I used this room and the other is a bathroom.

Q. Who was this other fellow?—A. Fellow by the name of Shannon.

Q. Where is he?—A. Brownsville.

Q. Was he there that night?—A. No, sir.

Q. Were you alone in the house?—A. Yes, sir.

Q. Where were you sitting reading?—A. Right in front of this door here.

Q. Were you on the porch or in the room?—A. I was in the room—inside the door.

Q. How far inside the door?—A. About 3 feet.

Q. Where was your lamp?—A. My lamp was back of me.

Q. And was on what?—A. On a table.

Q. What kind of a lamp was it?—A. It is a kind of a lamp with a round light.

Q. How long had you been reading there?—A. About half an hour.

Q. What had you been doing before that?—A. I came from the drug store. Was in the street some time; closed the drug store about 10 o'clock.

Q. Were you in the street from 10 o'clock to 11, or to the time you went home?—A. Yes; about from 10 to 11; yes, sir.

Q. Did you note the time when you went home?—A. No, sir.

Q. You don't know what time you did go home?—A. I don't know what time I got home.

Q. Do you know what you did between 10 and 11 o'clock, or from the time you closed your store until you went home?—A. I did nothing; just went around the streets.

Q. Just walked around the streets?—A. Yes, sir.

Q. Do you remember having seen anybody anywhere on the streets?—A. No, sir.

Q. You saw nobody at any place?—A. I saw some people, but I don't know who was they.

Q. How many did you see; were they together?—A. Not more than 10.

Q. Were they together?—A. Not more than 10; no, sir.

Q. Were these 10 at the same place?—A. No, sir; in different places—different streets.

Q. Can you tell us any particular place you went to?—A. No, sir; went nowhere; just went around the streets.

Q. Walked aimlessly about the streets?—A. Walked what?

Q. Walked about the streets without purpose of any kind?—A. No, sir; no purpose at all.

Q. What were you reading when this firing commenced?—A. I don't know what you mean.

Q. You said you were reading when the shooting began.—A. Yes, sir.

Q. What were you reading?—A. I don't understand what you mean.

Q. Were you reading a newspaper or what were you reading?—A. I reading a newspaper.

Q. What paper?—A. A Mexican paper from Laredo, Tex.

Q. The first shots were from four to six shots?—A. Yes, sir.

Q. Where were those shots?—A. Right in front of my door; I think was inside of the wall.

Q. When did you become certain they were inside the wall?—A. What do you mean?

Q. When did you become certain they were inside the wall, these shots?—A. I don't understand.

(Question translated through interpreter and answered as follows through interpreter:)

A. I never was sure it was inside the wall; I said I think it was inside the wall.

Q. You never were sure this shooting was inside the wall?—A. No, sir; I say I think, I was more sure it was inside the wall than outside the wall.

Q. Did you see any flashes from the gun or guns?—A. Light you mean?

(Question was then translated.)

A. Yes, sir.

Q. When?—A. When they shoot.

Q. The first four shots?—A. Yes, sir.

Q. Where were they?—A. Right in front of my door.

Q. In the alley?—A. I can't tell, sir, whether in the alley or on this side; I think on this side.

Q. But you can't tell?—A. I can't tell sure; no, sir.

Q. Did you hear the working of the rifle when these shots were fired; these first four?—A. No, sir; I didn't hear anything.

Q. You did not hear the rifle; only heard the shots?—A. The shots; yes, sir.

Q. And yet you saw the flashes from the rifles?—A. Yes, sir.

Q. That was the first four shots?—A. Yes, sir.

Q. And those were directly in front of your house?—A. Yes, sir; right in front of my house.

Q. Did you see any men when these flashes were made?—A. No, sir; I can't see anything.

Q. Except the flashes?—A. Except the flashes.

Q. Why not?—A. Because I was reading at this time and I saw this way (witness moved hand across his face from left to right and indicated he was looking down at his book). I never see in front when I heard the shots. I was looking down like this. I was reading this book when the shots were on my left.

Q. When you did that shooting was on your left?—A. Yes, sir.

Q. How far to your left was this shooting?—A. I don't know, sir.

Q. (Translated.) How far away from you was this shooting?—A. I can't tell the distance.

Q. How far to your left, as you indicated, were these shots?—A. I can not say.

Q. And yet you say that you saw the flashes from those first shots?—A. Yes, sir.

Q. How far were you sitting from your light at this time?—A. From my light? About 3 feet.

Q. What did you do immediately after hearing these four or five shots that you say you saw?—A. I tried to go out and see what was the trouble, and I heard those men jumping and hollering there, and I blow the light out right away and close the door.

Q. You tried to get out?—A. Yes, sir.

Q. Did you go out?—A. No, sir; I put my head outside the door. It lasted less than a minute, I think.

Q. How long did it take you to blow out the light?—A. I just blow the light and the light went out; that's all.

Q. Blew it out immediately?—A. Yes, sir.

(Same question translated.)

A. When I returned from the door; yes.

Q. What did you do then when you put out the light?—A. I laid down on the floor.

Q. How long did you lie on the floor?—A. In that room, I think about two or three minutes.

Q. You laid on the floor for two or three minutes?—A. Yes.

Q. Were you scared?—A. Yes, sir.

Q. Very badly scared?—A. Yes, sir.

Q. Why?—A. Because I heard shots.

Q. Did you think you were being shot at?—A. No.

Q. Did you not tell the Citizens' Committee that you thought you were being shot at?—A. No, sir.

Q. Did you not tell Mr. Purdy that you thought you were being fired at?—A. I want to tell you something in Spanish; I can not say it in English; if you will let this gentleman explain it.

Q. (Translated.) Did you tell the Citizens' Committee that you thought you were being shot at?—A. No, sir; I was afraid that a loose bullet will come into my house and hit.

Q. (Translate the question to him again, please.) Did you not tell the Citizens' Committee that you thought you were being fired at?—A. I, directly, no, sir.

Q. (Translated.) Did you tell Mr. Purdy that you thought that they were shooting at you?—A. No, sir.

Q. Did you say to Mr. Purdy as follows: "Q. What was it frightened you; did you think they were going to shoot you?—A. Yes, sir; I thought they were going to shoot into my house." Did you so testify before Mr. Purdy? (Translated to witness, who answered in English as follows:)—A. I don't know—I don't think—some words I always ask for an interpreter myself; I can't speak good English. I don't know what the words mean. If I said—I don't know what the words mean.

Q. (Translated.) When you testified before Mr. Purdy, did you afterwards read this and sign the evidence?—A. I signed the paper; yes.

Q. (Translated.) And you swore to it before Louis Kowalski?—A. Yes, sir.

Q. (Translated.) And you swore before Louis Kowalski that these statements you had made were true?—A. Yes, sir.

Q. (Translated.) You had opportunity to read over what you signed and swore to?—A. Yes, sir.

Q. You can read English?—A. No, sir; not very well.

Q. You can read it?—A. No, sir; I can't.

Q. You swear that you can not read English at all?—A. I can swear; yes, sir.

Q. Do you in filling prescriptions have them presented in English at all?—A. Yes, sir.

Q. So you could read enough English to fill all prescriptions in the drug store? You can read simple English, can you not?—A. Yes; this English we use in the prescription business. I never studied English at all in my life.

Q. But you understand English?—A. Little English; yes, sir.

Q. Will you state now that you did not tell Mr. Purdy and afterwards swear to the statement that you thought they were going to shoot into your house?—A. I mean I thought some bullets were going to come into my house, and that's why I laid down on the floor. I don't know whether they tried to do nothing in town.

Q. (Translated.) How long did you lay down on this floor?—A. I stayed about fifteen or twenty minutes.

Q. (Translated.) Were you all this fifteen or twenty minutes lying on the floor?—A. I was three minutes first, and then I come back to my room and lay down on the floor there and stayed about—I can't tell. I think it was fifteen to twenty-five minutes, more or less.

Q. You laid down on the floor in the front room about three minutes?—A. Maybe less; yes, sir.

Q. Then you went into your bedroom and laid down on the floor there about fifteen or twenty minutes?—A. Yes, sir.

Q. Show the court how you got into your back room from your front room.—A. I walked from my front room to my back room.

Q. Did you go immediately to your back room as soon as you got up?—A. Yes, sir; right away.

Q. And were you lying on your face or on your back on the floor?—A. On my back.

Q. Were you lying on your face or on your back in the front room?—A. On my face.

Q. And what did you do when you got up off of the floor in your bedroom?—A. I went to my bed and sleep.

Q. Did you go back into your front room at all?—A. No, sir; not that night.

Q. How many men did you see shooting when these first three or four shots were fired? How many guns were firing these? You said you saw flashes.—A. I just saw flashes, but I did not see them at all.

Q. Was there more than one gun?—A. Yes; there was more than one gun.

Q. You saw more than one gun shooting these first four or five shots?—A. Yes, sir.

Q. How many?—A. Four or five, I would say.

Q. Were there four or five guns that shot these first four or five shots?—A. (Translated.) I did not see the guns; but I heard the shots, and with the back of my eye I saw the flash of the guns.

Q. Then, you don't know whether there was more than one gun or not that fired these first four or five shots? (Translate that and let him answer in English.)—A. I don't know; I think it was four or five, because they were instantaneous; about the same time.

Q. But you did not see the guns?—A. No, sir.

Q. And you did not see these men, these four or five that fired these shots?—A. No, sir.

Q. And you don't know whether they were inside or outside of the garrison wall?—A. I don't know, sir; but I think it was inside.

Q. How long after that was it that you saw these men jump the wall?—A. About—it was right away, less than one minute, when they jumped.

Q. What were you doing when they jumped the wall?—A. I just had my head out the door.

Q. You are certain that you actually saw them jump the wall?—A. Yes; I heard when they jumped.

(Translate that question and let him answer in English.)

A. Yes; I am sure they jumped the wall.

Q. (Translated.) Did you not tell the Citizens' Committee that you did not see these men jump the wall?—A. I do not remember if I said so.

Q. (Translated.) Did you not tell the committee as follows: "Q. What kind of shots, pistol or rifle?—A. Gun shots. Q. Where were they?—A. Inside the quarters. I heard the noise like somebody, big crowd, jumped the wall. Q. About how many?—A. I could not see him; I heard." Did you so testify before the Citizens' Committee?—A. I believe so.

Q. (Translated.) Then, at that time you were certain you did see these men jump the wall, or heard them, simply?—A. I heard them and I saw the bulk.

Q. How many did you see jump the wall?—A. I can't say how many.

Q. (Same question translated.)—A. I can not say.

Q. Did you not state yesterday that you saw 15 or 20?—A. Well, I say 15 or 20; yes.

Q. Well, did you see 15 or 20?—A. I think about 15 or 20, more or less.

Q. Did you not state to Mr. Purdy that you saw 25?—A. Maybe 25 or 30; I did not count it at the time.

Q. You only saw them while you were closing the door, did you not?—A. Yes; I only saw them when I closed the door.

Q. You were in considerable of a hurry when you were closing that door, were you not?—A. Yes, sir.

Q. You were not stopping to count people at that time, were you?—A. No, sir.

Q. How long after they jumped the wall was it before they fired there by your house?—A. About two or three minutes.

Q. It was two or three minutes after they jumped the wall before you heard any shots at your house?—A. Yes, sir: maybe less than that. It is too long for me to remember.

Q. (Translated.) Were any shots fired by anyone directly in front of your house on Fifteenth street?—A. No, sir; there was one shot in the room. I found it about two months ago.

Q. You did not find any shots in your room until about two months ago?—A. Yes, sir; about two months ago.

Q. You are certain that no one fired in the Fifteenth street directly in front of your house?—A. No, sir; when I was reading nobody do it; I don't know about after.

Q. Then you mean to say that you don't know whether there was firing in Fifteenth street immediately after these men jumped the wall and directly in front of your house? (Translated.)—A. By my house; no, sir.

Q. (Translated.) In front of your house on Fifteenth street?—A. I did not see anything.

Q. (Translated.) Did you hear any shots at that point?—A. I heard some shots, but I don't know where they was.

Q. How many did you hear?—A. I heard, I don't know how many.

Q. Might they have been fired by parties standing directly in front of your house?—A. I think from the corner of the alley.

(Same question translated.)

A. No; I heard shots, but I don't know where.

Q. (Translated.) Did you hear shots after the first four or five before you heard shots in the alley?—A. Yes, sir; I heard.

Q. How many did you hear during that time?—A. I don't know, sir.

Q. (Translated.) What is your recollection now about it—the number of shots you heard fired between the time these first four or six shots were fired and the time you heard men shooting at the side of your house in the alley?—A. I can tell you, from 15 to 20.

Q. But you don't know where those shots were fired?—A. No, sir.

Q. How many were fired in the alley alongside of your house?—A. I think it was about 10.

Q. (Translated.) You think there were about 10 fired in the alley alongside of your house?—A. I do not know.

Q. (Translated.) How long did these men who were shooting remain in the alley by the side of your house at that particular point?—A. They were walking, inside of town.

Q. Walking in the direction of Brownsville?—A. Yes, sir.

Q. (Translated.) How long were they there at that point, alongside of your house in the alley?—A. They were walking all the time.

Q. (Translated.) And you don't know whether any shots were fired at that point or not, alongside of your house in the alley?—A. In the street?

Q. (Question repeated.) A. I don't understand the word; in which place?

Q. Ask him to go to the map, please. Point out his house and the alley.

(Interpreter points out to witness on map.)

Q. Ask him to put his pointer in the alley alongside of his house. Ask him if he heard any shots fired at that point or between that point and Fifteenth street?—A. Yes, sir; I heard.

Q. Ask him how many he heard at that point.—A. I can not tell precisely how many there were.

Q. Ask him about how many he thinks there were. What's his recollection?—A. I should say about 15 or 30.

Q. (Translated.) Did you see any flashes of the gun or rifles at that point?—A. No, sir.

Q. (Translated.) Do you know how many guns there were that were firing these 15 or 30 shots at this point?—A. No, sir.

Q. Did you see any rifles at this point at all?—A. No, sir.

Q. (Translated.) Did you see any rifles in the hands of the men in the alley between Fifteenth street and that point (interpreter indicated points on map) while passing from Fifteenth street up to the point where they were firing?—A. No, sir

Q. (Question translated to witness again.)—A. No, sir; I did not see any men or gun; only heard the shots.

Q. (Translated.) Then you saw neither men nor the rifles in their hands while in the alley?—A. I saw what I said before, but not before reaching to that point.

Q. (Translated.) Did you see any men with guns in their hands while they were in the alley?—A. In the alley; yes, sir, I saw.

Q. (Translated.) Whereabouts in the alley were they when you saw them?—A. Can I show on the map?

Q. Yes.—A. It was right here. I was inside this window and the men was about here (indicating a point near the back lot and that his window was in the back part of the house; that is, the part toward the Cowen house). (This was translated to the witness, as the record read, and he said it was correct.)

Q. (Translated.) Is that the only point in the alley that you saw those men?—A. It is the only.

Q. (Translated.) How long did they remain at that point where you actually saw them?—A. They were going toward the center.

Q. (Translated.) About how long were they there when you saw them?—A. They never stopped; I was the only one that *stooped*.

Q. Ask him to indicate the point on his house, as near as he can, where this window is located; the window in his bedroom.—A. Right here (indicating a point on the rear part of the house, slightly southwest of the center, measuring from the alley).

Q. (Translated.) Is that the only place where you saw these men so you could distinguish their clothing?—A. That's the only point where I saw.

Q. You had not seen the clothing so as to distinguish it at any other point?—A. No, sir.

Q. (Translated.) Tell us again how those men were dressed. Describe the clothing.—A. It was light clothing.

Q. (Translated.) Can you describe this clothing more accurately?—A. No, sir.

The court then took a recess until 11.30 o'clock a. m.; at which hour the members of the court, the accused, his counsels, the witness, the reporter, and the judge-advocates resumed their seats.

Q. You could not see whether they had on hats?—A. No, sir.

Q. Do you know whether they had on hats or not?—A. No, sir; I don't know.

Q. Do you know whether they had on coats?—A. No, sir; I can't tell.

Q. Might some of them have been in dark shirts?—A. No, sir; I think all of them were in "claro."

Q. You mean light-colored clothes?—A. "Claro;" yes, sir.

Q. How many men did you say you saw at that point from the window?—A. About four or five.

Q. And you saw their guns at that time?—A. Yes, sir.

Q. You say they were walking or running; or how were they going?—A. They were walking.

Q. Were they standing straight or how?—A. No, sir.

Q. Show the court what position they were in.—A. Yes, sir; this way (standing erect, with arms as though holding a gun or pointing a gun).

Q. Were they standing erect or did they bend over?—A. No; I did not see much the face, but I saw most the guns.

Q. You could not see their faces?—A. No, sir.

Q. Is this the position the men were in when you saw them from your window—where this pointer is?—(Translated.)—A. I saw them from the distance that could be seen from the window.

Q. (Translated.) I want to know what point were they in the alley when you saw them.—A. They were in the alley near the window. They were behind the division of my back yard, but not inside of the yard.

Q. They were behind the addition of your back yard?—A. Between the division of the yard, but in the alley.

Q. Is there a fence between the back of your house and the lot next to you?—A. I no remember—I think so.

Q. (Translated.) Do you remember how high that fence is between your lot and the next one?—A. Height is about 5 feet.

Q. (Translated.) This fence is on the alley and runs from your house toward the Cowen house?—A. There is another house between the Cowen house and mine, an empty house.

Q. (Translated.) Does this fence you say is about 5 feet high extend from the back of your house over to the Cowen house?—A. I do not understand.

Q. Ask him if there is a fence extending from his house over to this unoccupied house there.

(Interpreter indicated on the map for witness.)

A. Yes; there's a fence.

Q. Ask him about how high that fence is.—A. About 5 feet.

Q. Was that house occupied there in rear of his house and the

Cowen house, and on which your pointer is now located?—A. I do not know whether this one or this one is the empty house. One is the Cowen kitchen, but I am not sure. (Witness indicated the unoccupied house as the small one directly in rear of the southwestern portion of his house and in the next lot, and the kitchen is the long house shown to be directly in rear of the Cowen house and in the Cowen lot.)

Q. Ask him what that small unoccupied house is there.—A. I think it is the house to rent that belongs to the Rendalls.

Q. This house is not in the lot where his own house is located, is it?—A. No, sir; it is by the fence.

Q. (Translated.) How high is that fence running from the alley down toward the telegraph office?—A. The same height—5 feet.

Q. Is this a board fence?—A. Yes, sir; divided. Not a tight fence.

Q. Where were the next shots you heard after the men left this place where you saw them—the only place where you saw them in the alley (translated)?—A. Well, I think it was in the market direction or between my house and the market.

Q. Can you not locate these shots more accurately?—A. No, sir; I can't.

Q. Do you know whether they were at the Cowen house or not?—A. No, sir; no, I do not.

Q. (Translated.) How long after these men passed your house at the point where you saw them was it that the firing continued?—A. How much time had passed?

Q. Yes. During what time did you hear firing after these men passed your house—at the point where you saw them (translated)?—A. When the shots ceased?

Q. Yes; up to the time the shots ceased.—A. I can not say.

Q. About how long?—A. About ten minutes, more or less; ten or twelve.

Q. (Translated.) These shots kept up during all the time you were lying on your back in the bedroom, did they not?—A. Yes, sir.

Q. You are sure about that?—A. Yes, sir.

Q. Did you hear or see any men come back down the alley toward the post?—A. I heard some noise, and I think some men came back by the alley, but I didn't see them.

Q. Did you tell the Citizens' Committee that you heard these men come back?—A. I don't know, sir; I don't think they asked me.

Q. Did you not tell the Citizens' Committee that you did not hear them?—A. I don't know.

Q. (Translated.) Did you not testify as follows before the Citizens' Committee? "Q. Did you see the soldiers when they came back to the garrison?—A. No." Did you so testify before the Citizens' Committee?—A. I think so.

Q. (Translated.) Then at that time you were certain that you did not see any of these men?—A. Return? No.

Q. (Translated.) How long was it after you heard the last firing that you heard these men return?—A. I don't know how long, but I heard paces; it was about five minutes afterwards.

Q. (Translated.) What were you doing when you heard these men go back?—A. I was just going to sleep.

Q. How many did you hear?—A. I don't know.

Q. Did you hear any talking at that time?—A. I am not sure, but I think I did; I am not sure.

Q. You think you heard, but you are not sure; is that right?—A. Yes, sir.

Q. (Translated.) Are you not certain because you were going to sleep?—A. I was going to sleep and I kind of woke up two or three times during that time.

Q. Ask him that question again. Is he uncertain because he was going to sleep?—A. I was not very sure; I could not say any more.

Q. Did you see any men go onto Elizabeth street?—A. No, sir; I didn't see any men.

Q. Did you hear any men go on Elizabeth street?—A. I heard; yes, sir.

Q. When was it you heard these men go on Elizabeth street?—A. (Translated.) A little while after the shots ceased. I do not know if they were going toward the post or the opposite direction.

Q. How many did you hear at that time?—A. I don't know, sir; can't tell.

Q. Immediately after you heard these four or five shots did you hear any men go on Elizabeth street—this first firing?—A. I think some men ran by Elizabeth street; yes, sir, but——

Q. Did you hear any men go on Elizabeth street?—A. I can not hear from my place, sir.

Q. (Translated.) Did you hear any men go on Elizabeth street at the time you heard these four or five shots?—A. I heard some steps in that direction.

Q. (Translated.) Where were those steps that you heard in the direction of Elizabeth street?—A. In the street.

Q. In what street did you hear these steps?—A. I think Fifteenth street.

Q. (Translated.) Will you show the court where these steps were when you heard them, at the time of these first four or six shots?—A. All took different directions.

Q. Show the court where they were when you heard them.—A. Going this way. (Indicates point from the center of his house, and carries pointer down toward Elizabeth street to the corner.)

Q. (Translated.) Did you hear them all the way from the front of your house down to Elizabeth street?—A. I heard in that direction. I could not hear any more, because I shut the door. This is impossible for me to describe in what position they were, that is——

Q. (Translated.) Did you hear some men at the same time going in the opposite direction—that is, toward Washington street?—A. I did not hear anybody in Washington street.

Q. (Translated.) Did you hear anybody going toward Washington street?—A. No, sir; I could not hear anyone from my room.

Q. (Translated.) Why is it you couldn't hear them going toward Washington street when you could hear them going toward Elizabeth street? Answer in English.—A. In English I can not answer.

Q. Answer in Spanish, then.—A. Because my house is more near to Elizabeth street. At the same time there were some shots and steps in the alley that bothered me to tell whether they were going in that direction.

Q. Did you hear any shots in the direction of Elizabeth street at this time?—A. No, sir; I did not hear any from Elizabeth street.

Q. Did you hear any shots in the direction of Washington street at this time?—A. I think Washington street is between the market and my house. That's the direction I heard it in.

Q. (Translated.) But at the time these men first commenced the firing, or immediately after that and before they passed down the alley, did you hear any firing in Fifteenth street up toward Washington street?—A. I can not say if I heard any. The shots from two blocks or one yard have the same sound.

Q. Before you heard these men jump the wall did you hear a bugle call?—A. I think I did hear a bugle; I don't know what they do; I know nothing about if it is a call or not.

Q. Did you hear the bugle call at all before these men jumped the wall?—A. I think I heard it at the same time; I don't think I heard it before.

Q. You think you heard it at the same time the men jumped the wall?—A. Yes.

(Last three questions and answers thereto were repeated to witness in Spanish and asked if correct, and he replied they were.)

Q. (Translated.) Then you heard this bugle call just as you were closing your door?—A. Yes, sir; it was only one and the same time for me.

Q. Where were the men who were doing the firing when you heard the next bugle call?—A. I can't tell, sir.

Q. (Same question translated.)—A. I think they were inside of the town; more inside toward the town from my house.

Q. (Translated.) Did you hear any bugle call during the time the men were firing close to your house, or when they were passing your house?—A. I think they had already passed. I never gave much attention to the bugle, because I don't know.

Q. Are you certain about that?—A. Of the bugle?

Q. Yes.—A. Yes, sir; I am sure. I can say nothing more.

Q. (Translated.) I want to know if he is certain of the location of the men who were doing the firing when he heard the next bugle call.—A. I am not sure. You asked me more or less.

The court then took a recess until 2.20 o'clock p. m., at which hour the members of the court, the judge-advocates, the accused, his counsel, the witness, the interpreter, and the reporter resumed their seats.

The witness, JOSÉ MARTINEZ, after having been reminded by the judge-advocate that he was still under oath, continued his testimony as follows:

The interpreter was also reminded that he was still under oath.

CROSS-EXAMINATION CONTINUED.

QUESTIONS BY COUNSEL FOR THE ACCUSED

Q. You have already stated that you did not at any time see the faces of those men who did the shooting?—A. I could not see them, because it was a dark night.

REDIRECT EXAMINATION.

QUESTIONS BY THE ASSISTANT JUDGE-ADVOCATE.

Q. Your lamp was shining brightly out in that street in front of your house at the time, was it?—A. Yes, sir.

Q. Now, if these men had been in Fifteenth street and in front of your house at the time they fired these first four to six shots, would not you have seen them?—A. Them?

Q. Them.—A. He asked the question if I couldn't see them from my room?

Q. Yes; I want to know whether if those men had been in front of your house and on Fifteenth street—that is, between your house and the garrison wall at the time they fired those four to six shots—would you not have seen those men in the light?—A. No, sir; I couldn't see them. The light was in another direction.

Q. Did the light from your lamp shine directly to the front of your house or to one side?—A. To one side.

Q. So that it was impossible for you to tell whether those men were on the inside of the wall or the outside of the wall?—A. Yes, sir; it was impossible.

Q. The light, therefore, didn't shine directly outside the house?—A. It was right to one side of the door.

Q. When those first shots were fired, and you went to the door, did you stay there very long?—A. No, sir; it was instantaneous.

Q. Did you pay particular attention to the sounds of the bugles that night, or were you more interested in the shooting—did that attract most of your attention?—A. Yes, sir; the shooting attracted more of my attention; the bugle didn't attract my attention.

Q. You were at the time afraid, as you say, that some bullets might enter your house?—A. Yes, sir.

Q. So that any impression you have as to the exact time at which the bugle calls were first heard, was formed at a time when you were more or less excited, was it not?—A. The bugle sounded when I was more excited, at the same time when the firing was going on.

The judge-advocate:

I would like to instruct the reporter to note in the record, as was done this morning, when the witness answers in English and when he answers through the interpreter.

The assistant judge-advocate:

I would like to state to the court that the record of this morning's proceedings is not here; the other stenographer has her notes over at the house and is writing up the manuscript now, so I can't quote directly from the record; but if the counsel for the defense is willing to take our recollection of what was stated by the witness this morning in regard to a question asked him relative to whether he could read English or not, or whether he would swear to it, I think that he did not entirely understand the question.

Counsel for the accused:

We will object to any questions that are erroneous—that we think are erroneous.

Q. (To interpreter.) Tell the witness this question in Spanish: Can you read English at all—simple English?—A. (Translated.) Depend whether it is writing; I can not read a whole article.

Q. But so far as ordinary business letters are concerned and things that come up in the course of your business as a druggist, can

you read those all right?—A. (Interpreted.) Orders and letters sent he can understand—orders received and letters sent he can understand them.

Q. Did you understand this morning when you replied to the question, "I can swear," that you were being asked whether you could swear you couldn't read English at all?

Counsel for the accused:

May it please the court, I can't understand that question; I would like to have him read it as it is recorded.

(Reporter reads question.)

Assistant Judge-Advocate:

That question is rather involved, I will admit.

Q. (Interpreted.) This morning you were asked a question by the counsel for the defense, asking you, in effect, whether you could read English, or, rather, whether you would swear that you couldn't read English, and you replied, "I can swear." Do you mean that you would be willing to swear that you could not read English at all?—A. He says he didn't understand what he referred to.

Q. You didn't mean that you would be willing to swear you couldn't read English?—A. Yes; I swear that I can't read English.

Q. (Interpreted.) Not at all?—A. (Interpreted.) I do not understand "at all."

QUESTIONS BY THE COURT.

Q. (Interpreted.) While you were reading, and before you heard the first four or six shots fired, did you hear any sounds of blows as if something was being broken with an ax?—A. (Interpreted.) No, sir.

Q. (Interpreted.) Did you hear any such sounds afterwards?—A. (Interpreted.) No, sir.

(Excused.)

The judge-advocate:

May it please the court, I have already sent twice for Lieutenant Grier and have not yet gotten him. The last orderly has gone to the house and I think he will be here in a few moments.

(The orderly at this time reported that Lieutenant Grier would be here in a few moments.)

The court then took a recess until 2.35 o'clock p. m., at which hour the members of the court, the judge-advocates, the accused, his counsel, and the reporter resumed their seats.

Second Lieut. H. S. GRIER, Twenty-fifth United States Infantry, a witness for the prosecution, was duly sworn and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE ASSISTANT JUDGE-ADVOCATE.

Q. Please state your name, rank, and station.—A. H. S. Grier; second lieutenant, Twenty-fifth Infantry; Fort Reno, Okla.

Q. How much service have you had in the Army, and where?—A. Counting my four years at West Point, had eight years in next June;

since commissioned I have served at Fort Niobrara from September, 1903, until June 25, 1906, and from July 26, until September 22, Fort Brown, Tex.; since that date Fort Reno, Okla.

Q. With what regiment has your service been?—A. All with the Twenty-fifth Infantry.

Q. Do you know the accused; if so, state who he is?—A. I do; Maj. Charles W. Penrose, Twenty-fifth Infantry.

Q. Where were you on August 13–14, 1906?—A. You mean the night of August 13–14?

Q. No; on August 13–14?—A. I was in Fort Brown, Tex.

Q. On what duty were you on August 13, 1906?—A. Post quartermaster and commissary, acting adjutant, ordnance officer, and post treasurer.

Q. The accused was on what duty on that day as well as the following day?—A. Commanding the post.

Q. With what rifle were Companies B, C, and D, Twenty-fifth Infantry, equipped at the time they were in Brownsville?—A. Equipped with the new Springfield.

Q. When were these rifles received by the battalion, and where?—A. I am not certain as to what time; my recollection is it was about April or May in 1906, at Fort Niobrara, before target practice.

Q. You are certain, however, that they received them while at Niobrara before the target practice begun?—A. Yes, I am.

Q. Did these companies have target practice at Fort Niobrara with this rifle?—A. They did.

Q. When?—A. My recollection it was in the months of May, June, and July, in that department.

Q. So the target season was completed only a short time before the companies went to Brownsville?—A. Yes.

Q. Judging from your experience as an officer of considerable service in the Twenty-fifth Infantry, will you state whether or not it is possible for the enlisted men of a company to accumulate, during target practice, a considerable amount of ammunition without being detected?—A. I think that it would be possible where a company commander failed to keep track of the number of rounds fired by each man on the range, every man in the company being so disposed to take ammunition.

Q. Is it easy or difficult for men to get ammunition in this way?—A. It all depends, I think, on his company commander.

Q. After your arrival at Brownsville, did you ever hear or overhear anything said by citizens of Brownsville indicating that the presence of negro troops was not desired there?—A. Yes; I did. On the very first night on which I was in Brownsville I registered there at the Miller Hotel, and in conversation with the night clerk he told me that the "niggers" were not wanted down there, and they could not take the liberties that soldiers had taken down there, or there would be trouble.

Q. Did you ever hear any other indications of ill-feeling on the part of townspeople; if so, what, when, and where?—A. No; not specifically; but I was told by two or three different people in the town that it was not customary to treat the negro in the South as it was in the North, and to allow him to drink at the same bar with white men. This, however, was not in a resentful way, but merely by way of explanation.

Q. Were you present when Private Newton, of Company C, made a report regarding an alleged mistreatment at the hands of a civilian?—A. I was.

Counsel for the accused:

To whom was it made? Do you refer to this accused in asking that question, or not? Make your question more specific, and don't be in a hurry, so we can know whether we wish to object to it. If this is something with somebody else, we object. If it is a report made to the accused, please ask your question so there won't be any question about it, and we won't object.

Q. I will modify the question. Were you present when Private Newton, of Company C, made a report to Captain Macklin in which he alleged mistreatment at the hands of a civilian?

Counsel for the accused:

We object to that. Captain Macklin is not on trial. Any report made to Major Penrose is admissible, but any reports made to Captain Macklin are inadmissible in this matter.

Assistant judge-advocate:

This question was merely to ascertain from the witness whether he was present at that time or not. I have not called for any statement from him as to what anyone said, and I don't intend to.

Counsel for the accused:

It is not admissible, and we object to it. Captain Macklin is not on trial, and we object to laying any foundation in this case for the trial of Captain Macklin.

Assistant judge-advocate:

I would like to state to the court that by the testimony of another witness the fact that Private Newton did report to Captain Macklin was brought—the fact was brought out by Captain Macklin himself, I believe, on the stand—and there was some question as to the manner of Private Newton at the time and some other things which have nothing to do with the substance of the report made, and it was what the witness actually saw himself at that time that I am going to ask him about, and there can be no objection, it seems to me, to a witness stating what he did actually see. I am not asking for any hearsay testimony at all.

Counsel for the accused:

You just as well come in here and ask this witness if he saw Mount Pelee, if Mount Pelee is pertinent, and as it is not pertinent, nor does Captain Macklin's trial enter into this case. They both occupy the same position, and we object to any foundation being laid in the Macklin case in the Penrose case; and this is counsel for the accused; he is the judge-advocate in the Macklin case himself, and we object to it.

Assistant judge-advocate:

I wish to state that there is no such intention in asking that question; it is merely a question of fact. I want to ask the witness what he saw at a certain time that has already been testified to by a witness on this stand in response to question asked him on cross-examination, and I merely want to ask this witness what he saw at the time, and we are just as much entitled to ask him what he saw at the time as the defense was to ask the other witness what he saw at that same time. It is absolutely pertinent and relevant, and there is no hearsay whatever about it, or opinion, other than the ordinary opinion that every one is entitled to have, whether a man was drunk or sober, or angry or pleased; it is just a self-evident proposition.

The presiding officer:

A member asks, could not you frame your question different, so there won't be any objection.

(The reporter, at request of the prosecution, here read the last question, which is objected to.)

The accused, his counsel, the judge-advocates, the witness, and the reporter then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce the decision that the objection is not sustained. The question will be answered.

(The reporter read the question objected to, as follows: Q. I will modify the question: Were you present when Private Newton, of Company C, made a report to Captain Macklin in which he alleged mistreatment at the hands of a civilian?)

A. I was.

Q. What was the manner of Private Newton at this time?—A. He was perfectly cool and collected, but appeared a little bit nervous, as if he was under considerable restraint—self-restraint.

Q. Did he show any signs whatever of being excited or on the verge of being excited?—A. Nothing except the nervousness, the twitching of his hands while he talked.

Q. Did any other instances of ill treatment of soldiers ever come to your official notice as adjutant or come to your notice as adjutant?—A. What do you mean? Official notice or something that just come under my observation?

Q. Either.—A. Yes; the Reid affair and the case of Private Adair of C Company also.

Q. What was this Adair case?—A. Private Adair went to Matamoros, Mexico, and while there purchased a souvenir pencil. It had been the practice of the customs authorities not to search anyone going between Brownsville and Matamoros unless they carried a package. When Adair returned from Matamoros, one of the customs inspectors got hold of him, asked him if he had anything; he told him yes, he had this pencil; he said something to the inspector——

Counsel for the accused:

Q. Were you present at this conversation or was it reported to you?

A. It was reported to headquarters, I believe. The custom inspector said something to the effect that no damn nigger could bring anything through him.

Q. Between what dates did you serve as acting battalion adjutant of the First Battalion of the Twenty-fifth Infantry?—A. Whereabouts?

Q. Did you serve as such during all the time you were at Brownsville?—A. No; served from about August 3 until about August 18.

Q. Prior to that time what service had you had as battalion adjutant of that battalion, and where?—A. I had been continuously acting battalion adjutant from February 12, 1905, up to July 1, 1906.

Q. From what section of the country came the greater part of the recruits received during your service as acting battalion adjutant of the First Battalion of the Twenty-fifth Infantry?—A. I don't know; I never checked them up.

Q. Were there any received from Texas that you know of?—A. Yes; there is one man that I know of who came from Texas.

Q. The majority of them, however, to the best of your recollection, came from where, in general terms?—A. Well, I don't know where they came from. I know what depots they usually came from, but I don't know where they were born or where they originally came from.

Q. Well, what depots did they mainly come from?—A. St. Louis, Jefferson Barracks, Kansas City, Memphis, Montgomery, Ala., Mobile, Ala. Those are some of the ones I recall.

Q. Did you get very many recruits from Mobile and Montgomery and those other southern depots, or did you get most of them from the northern depots?—A. I don't know. My recollections are all based on what I happened to notice in checking up D. and A. cards—description and assignment cards.

Q. While at Fort Niobrara, were your men permitted by the saloon keepers in town to drink at the same bars with white people?—A. Yes.

Q. Did white people apparently object to this up there?—A. Not in the least.

Q. Was their treatment in this respect different in Brownsville?

Counsel for the accused:

May we ask the purpose of this? That is going way beyond the scope of these charges. The charges specifically refer to what occurred at Brownsville, as I recall, from midnight the 13th and 14th of August to daylight, and then from the 14th on in the other, and if we are going into the record of the Twenty-fifth Infantry, all right; but I can't, for the life of me, without some explanation, understand the purpose of this.

Assistant judge-advocate:

The purpose of this was merely to contrast the conditions of service at Fort Niobrara and Fort Brown with particular reference to this battalion of the Twenty-fifth Infantry and to try and bring out the fact or bring out reasons why these men should feel resentful toward the townspeople; and inasmuch as in the specifications in this case that is an element entering into it, I think that this may elucidate things to some degree.

Counsel for the accused:

We do not think it is proper direct examination, and we interpose an objection.

Q. Did any white man, to the best of your knowledge, ever knock down or curse a colored soldier of your battalion while in Nebraska for not getting off the sidewalk——

Counsel for the accused:

In order to see, we will interpose an objection.

Assistant judge-advocate:

I will withdraw the question.

Q. Do you know whether Colonel Hoyt, commanding the Twenty-fifth Infantry, ever officially requested that the Twenty-fifth be not sent to Texas?—A. Yes, sir; he did.

Q. In what way, by telegram or by letter?—A. By both.

Q. Was the letter accompanied with any certificates?—A. It was.

Q. What were they?—A. Certificates of officers, from fifteen to twenty years' commissioned service, who had served with colored troops along the Texas border, and relative to the trouble that it is said troops had had in previous years at Fort Bliss, Fort McIntosh, and Fort Ringgold.

Q. Do you know why the Twenty-fifth Infantry was not ordered to the maneuvers at Camp Mabry last summer?—A. Because they were ordered, eventually, to proceed to their stations.

Q. State, if you know, what impression the men had with regard to their not being ordered to the maneuvers?—A. I think they knew the reason why they were not ordered there.

Q. What was that?—A. They had heard, probably in an indirect

manner, about these certificates admitted by officers who were their respective company commanders.

Counsel for the accused:

Did the witness know, of his own knowledge, what the men knew?

A. I never talked to any of them about it.

Counsel for the accused:

We object to any further answer along that line, then.

Q. State whether anything unusual happened a short time before retreat on the evening of August 13, 1906.—A. I don't understand the question.

Q. I will change to read: Did Major Penrose give you any orders out of the ordinary a short time before retreat on the evening of August 13, 1906?—A. He did.

Q. Please state what they were.—A. He told me to present his compliments to all company commanders and inform them that all passes were up at 8 o'clock that night; directed that this order be published to the companies at retreat; also stated that he had already told the officer of the day himself.

Q. Did Major Penrose state to you about that time the cause of this order?—A. He did.

Q. What was it, please?—A. He said that Mayor Combe and Mr. Evans had just been to see him, within half an hour, and they had informed him of the outrage committed upon Mrs. Evans the night previous.

Q. Please state all he said in this connection.—A. And to avoid all possibility of trouble that the men on pass in town might get into over this thing, he was having all passes recalled immediately, and intended to send patrols through the town that night and gather the men up.

Q. Did he express his belief or disbelief in the Evans story?—A. He did not say anything about it in that line.

Q. This order was duly published at retreat, I presume? Did you publish the order at retreat?—A. No, I did not; I delivered it in person to the company commanders; they were supposed to attend to the rest.

Q. What time did you go to bed that night?—A. Between half past 10 and 11 o'clock.

Q. Did anything unusual happen after you had gone to sleep? If so, state when and how you were awakened.—A. About 12 o'clock I was awakened by a shot, followed at about a five-second interval with another shot, both of which I took to be pistol shots; and while I was getting out of bed the second shot was followed by a pretty good volley—that is, not scattered. This, after a short interval, was followed by a rather ragged volley, and this in turn by a series of shots fired at will. I got up. Do you want me to go ahead with that?

Q. Yes.—A. I got up and put on a few clothes, and just as I was going down from the second floor of my house to the first floor I heard Major Penrose call out, "Sound call to arms." When I got out on the front porch of my house Major Penrose was running across the parade ground calling out, "Fall in, lads; fall in."

Q. By the way, Mr. Grier, in this connection, anything with reference to Captain Macklin about this time, you can just omit.

Counsel for accused:

We object to that class of instructions. The court has already ruled that Captain Macklin's conversations were in order. We object to that class of instruction.

Assistant judge-advocate:

I merely wish to state that it was not my intention to prejudice Captain Macklin in his trial by trying to get anything out of this witness about that. He probably knows what Captain Macklin doesn't want brought out.

Q. Proceed, and please state what happened after that.—A. I went east about 15 yards to Captain Lyon's quarters with my wife and baby; saw them get in that house safely, and I turned to walk from Captain Lyon's quarters toward C Company barracks, and about 15 yards across the parade ground from the officers' line I heard somebody rushing up toward me in the dark. I got my revolver and halted him. I could not see him until he was in about 5 or 6 feet of me, and I asked who it was, and he said it was Sergeant Harley, of C Company. I said, "What is the trouble over there, Sergeant?" He said, "They are shooting up the men in barracks." I says, "If that is the case, what are you doing over here?" He says, "I am going to get my captain." I then proceeded across the parade ground, calling out so I could locate Major Penrose in order to report to him; found him standing in front of B Company barracks; reported to Major Penrose. He said, "Take command of C Company; Macklin can not be found, and I am afraid he has been done away with. See that your men get rifles and ammunition; form the company, take it out, and extend in line of skirmishers behind the wall, the left of your company keeping in touch with the right of B Company." I went immediately in front of C Company, where probably half the men were downstairs and in rank; some were in night clothes; hardly any of them had rifles, and I directed them to return inside the barracks and get their rifles and cover anything white they had on them. The men were in and out very quickly, and the first sergeant started to call the roll. I had never been on duty with this company, but I was certain from the way he called his roll, and knowing that he was acting first sergeant, that he was not familiar with it; so to save time I stopped him and started to count the men myself, covering them off in the rear rank, counting from right to left. I might state there that the first sergeant had his roll, but he hadn't any lantern; it was too dark to see without a lantern.

Q. The acting first sergeant?—A. The acting first sergeant. I counted, to the best of my knowledge and belief, 52 men. As adjutant of the post, I knew the company should have about 60. I went inside the barracks; on the first floor found two men, Quartermaster-Sergeant McMurray and Artificer Rudy, squabbling over whether or not the door to the ordnance stores be opened and ammunition issued; sent them outside; went upstairs and found one man up there with a gun without a bolt in it. He said that Corporal Miller had been in the habit of keeping his bolt in his locker to prevent it from rusting, and that in taking the rifles in the darkness Miller got a gun with a bolt in it and he drew Miller's gun without a bolt in it, and refused to go outside with it. I turned this man out, and after the first sergeant had reported to me the number of men on guard——

Q. The first sergeant or acting first sergeant?—A. The acting first sergeant. The number of men on guard, the sick, and those on detached service, I felt reasonably sure that the company was accounted for.

Q. Where was the first sergeant?—A. He was at Fort Sill, on the division rifle competition. I then in the meantime had a brand new box of ammunition opened in my presence and issued ball cartridges to all men not provided with same; marched the company east of their barracks opposite them, along the wall; remained there until 1.20, when I was relieved—1.20 a. m., the 14th.

Q. You say you issued ball cartridges to all men not provided with the same? Were there some men that did not have any ammunition?—A. Some men did not have any ammunition at all.

Q. Did they say where it was?—A. They didn't say where the ammunition was, but I felt reasonably sure myself that in the confusion in the darkness they probably couldn't find it.

Q. How many rounds were issued to each man?—A. I don't know how many rounds were issued. I simply passed out bandoleers, and told them to take all the cartridges their pockets and belts would hold. This was a box of 1,200, in bandoleers.

Q. This was the regular cartridge—not the guard cartridge?—A. This was the regular ball cartridge.

Q. With the steel-jacketed bullet?—A. Yes.

Q. Now, when you were first awakened and heard these two shots that you thought were pistol shots, did you get up at once or did you wait until——A. I did not get up; I sat up in bed. I did not get out of bed until the first volley was fired.

Q. What did that volley sound like?—A. How do you mean?

Q. Was it rifle fire?—A. It sounded like it was from a high-power rifle.

Q. Could you tell any difference in the sound between that sound and the sound of the Springfield rifle on the target range as you had heard it that summer?—A. Well, I don't pretend to distinguish between the sounds of the different high-powered rifle. I don't believe anybody can. I think a Winchester would have made exactly the same report, giving the same impression to your ear that a Springfield would, or Mannlicher, or any high-power rifle.

Q. I believe you stated the first bugle sounded when you were coming downstairs, or was it after you got outside?—A. It was while I was going downstairs when the first call to arms was sounded.

Q. That was sounded by——A. By the musician of the guard.

Q. How long after was the call taken up by the musicians of the companies?—A. Almost immediately. I think those men had been awakened as the officers had—by the shooting—and they knew their orders in case call to arms was sounded; and just as soon as the trumpeter of the guard sounded it they also ran out and sounded it in all three companies.

Q. Where were you at the time these other trumpeters took up the call?—A. Just coming out my front porch. The interval was measured by the time it took me to run down a flight of stairs and through a hall about 12 feet from the staircase to the door.

Q. About how long was it from the time you heard these first two shots until the time you heard the first bugle call?—A. Well, it must

have been a couple of minutes, because it wasn't sounded until after the first volley was fired.

Q. And you didn't get out of the bed until after the first volley was fired, and then you dressed partially?—A. Yes, sir; very scantily, in fact.

Q. Was any delay due to not finding things in the dark?—A. Yes, sir; I lost a little time. I had to open a field trunk to get ammunition; that is, the trunk wasn't locked; it was inside. I had to find it in the dark and reach in and get it.

Q. The trunk wasn't locked?—A. It wasn't locked.

Q. When you reached the barracks the men were already falling in, you said?—A. Yes.

Q. Were there any lights about the barracks?—A. Not a one.

Q. While the companies were being formed?—A. The men were yelling at a man for lighting a match to find something in the barracks. The men yelled and cursed at him not to draw the fire into the barracks.

Q. So there was a good deal of confusion necessarily?—A. Yes, sir.

Q. Now, with regard to the accuracy of that roll call, or the count, that you made of Company C. Was that accurate or was it made while you were laboring under the impression that the post was being fired upon from the town?—A. It was made while I was under that impression, and I never claimed that there was an air-tight check made on that company. In view of the orders given me, I considered it of first importance to get that company properly equipped and get behind that wall and count them afterwards.

Q. And there were a number of men that you had to send back to their quarters, either to get their rifles or to put on more clothes?—A. Yes.

Q. And were there other men who were engaged in passing ammunition or in helping get it out?—A. Yes, there were; the file closers did that.

Q. This was all in the dark, this roll call and count?—A. Yes, sir.

Q. With no artificial light to help?—A. No; except I could see the men as I counted them.

Q. But as you walked down the line, counting the men, is it not possible that some men were counted more than once in the dark?—A. It is; from the fact that whenever I struck a man that didn't have cartridges, didn't have his rifle, I ordered him to fall out, and I could not wait there until he came back, and the chances are he fell in on the left of the company when he did come back.

Q. How many did you fall out in this way?—A. I don't remember; I did not keep any check on that.

Q. Can you state approximately whether there were two or a dozen?—A. There were at least a dozen.

Q. How long after you first reached the company barracks was this that the last firing from these high-power rifles was heard?—A. How is that, again?

Q. How long after you first reached your company, or reached C Company, was it that the last firing of the high-power rifles was heard?—A. It stopped just before I got over to the barracks. There was, however, considerable scattered firing going on uptown in Brownsville.

Q. Did the rifle fire cease just before you got to the company?—A. Yes, sir.

Q. About how long was it from the time that you heard the last of this rifle fire until you had inspected your company, distributed ammunition, and counted the men?—A. About five minutes.

Q. It was about five minutes?—A. Yes, sir.

Q. Then, are you sure it wasn't more than five minutes?—A. No—yes; that is, I am sure it wasn't more than five minutes.

Q. Then you marched the company out to the wall?—A. Yes.

Q. Were there any lanterns along this wall during the time that C Company was there?—A. I did not see a one.

Q. Were the lights at the gate burning all the time you were there?—A. They were burning that night, but owing to buildings in the rear of B and C Companies intervening a part of the wall behind which C Company was posted was in a shadow.

Q. You left, I believe, before Companies B and D were relieved and sent back to their quarters?—A. Yes, sir.

Q. At the time you left the vicinity of the garrison wall all three companies were along the wall there?—A. Yes; they were; D Company had just come back.

Q. From——A. From the patrol through town. D Company was gone a half or three-quarters of an hour.

Q. Were there any lights at all along the wall, except near the main entrance to the reservation?—A. None that I know of.

Q. Was there anything to prevent men stationed along the wall from cleaning their rifles at this time?—A. Well, I don't believe they could.

Q. Were you present when Mayor Combe came in with Captain Lyon's company?—A. No; I was not present when he came in.

Q. You therefore did not hear any conversation that took place between Mayor Combe and Major Penrose?—A. Yes, sir.

Q. Please state what that was, and all the circumstances, as nearly as you remember—that is, so far as Major Penrose and Mayor Combe are concerned.—A. I was relieved about 1.20 a. m. of the command of C Company and went back to rejoin Major Penrose at the gate, and when I came up to report to him he was talking to Mayor Combe. I overheard Mayor Combe say to Major Penrose, "Major, your men have done this thing. Some of our citizens have seen them and recognized them to be colored soldiers under your command." Major Penrose replied, "I can not believe it; I can not believe it." That is all the conversation I heard.

Q. Until this time—that is, the time that Mayor Combe reported to Major Penrose, about 1.20 a. m.—what was the general impression that everyone had, so far as you know, or so far as you knew, with respect to the shooting?—A. I think, without a single exception, everybody inside that garrison that night thought that the garrison had been attacked from the town.

Q. Do you know whether Mayor Combe ever showed Major Penrose any empty cartridges, etc., that were picked up in the streets?—A. I have never yet seen a single cartridge case alleged to have been used at the raid in Brownsville.

Q. Well, since about 10 o'clock on the morning of August 14, 1906, have you ever had any conversations with Major Penrose relative to this shooting?—A. Yes.

Q. Have you discussed the matter thoroughly, or not?—A. Did he?

Q. Have you two discussed the matter?—A. Not particularly.

Q. Did he ever, since that time, state to you that he believed that his men had not done the shooting?—A. He never did.

Q. The keys to the armracks in the First Battalion of the Twenty-fifth Infantry are ordinarily kept where? Do you know, of your own personal knowledge?—A. Well, they used to be kept by the noncommissioned officer in charge of quarters and transferred from day to day when relieved.

Counsel for the accused:

Do you know anything about this, of your own knowledge?

A. The reason I framed my answer in that way was because in the last two years I do not know whether it has been changed or not.

Q. Did anyone report to you after you reached the barracks of Company C on the night in question that they could not get the gun racks open?—A. No.

Q. Did you ever order anyone to break open the gun racks or any of them?—A. I did not. I never gave any such order.

Q. Did anyone in your hearing give any such order?—A. What do you mean—of C Company?

Q. C Company, or to any member of C Company?—A. No; I did not hear any orders given to C Company, or any member of C Company, to break open the gun racks.

Q. Did you hear any gun racks broken open or any sounds resembling the sounds that would be made by an ax striking wood or iron after you took the company?—A. I did.

Q. When and under what circumstances?—A. Just as soon as I got over there and turned those men back for their arms—those that did not have them.

Q. So that the noise as if things were being broken open or into came immediately after you had sent these men to their quarters to get their arms?—A. Yes, and during that. While they were down there. To make that clear I will state again that when I got over there about half of that company was down there without arms and about half of them were inside the barracks. Now, when I sent these men back to get their arms, just about the time that I gave that order, I heard the crashing going on upstairs, and when I got upstairs they all had their guns or were getting them and getting out of there.

Q. Do you, of your own personal knowledge, know who gave the order?—A. I do.

Q. Of your own personal knowledge?—A. Yes.

Q. Please state it.—A. Major Penrose.

Q. Did you hear him give it?—A. I did not hear him give it.

Q. With reference to your inspection of the company prior to marching it out to the wall, did you satisfy yourself before moving out that every man had a gun and ammunition?—A. I did. When I say inspecting, I simply mean that I went along that line in a fast walk and glanced at each man as I passed, and saw he had a rifle and his ammunition, or asked them as I went by. I asked some of them, at least. It did not take me a minute to do that.

Q. Your idea at the time was merely to see that your men were equipped and get them out on the wall?—A. Exactly.

Q. Did you hear any shots coming over the post from the direc-

tion of town that night?—A. In crossing the parade ground I thought I heard a scattering of shot to the east of me, but I am not positive.

Q. Could you tell from the sound whether it was a rifle bullet or shotgun?—A. It sounded to me like the shot from a shotgun—the noise it makes when it hits on grass, when a shotgun is discharged and the shot scatters and drops.

Q. So that it was your impression that some shots were dropping on the parade ground?—A. Yes; on hard turf. I will state also that I am not positive about that; I may be mistaken.

Q. As to whether there was an actual sound or not?—A. Yes; I might have imagined it at that time.

Q. That was the only thing that you recall?—A. That was the only thing I recall.

Q. In your capacity as adjutant of the post of Fort Brown on the night of August 13, do you know whether Major Penrose altered the order for the guard in any way after 5 o'clock in the afternoon?—A. I do not. The commanding officer in posts where I have served has been in the habit of giving his special orders to the officer of the day in person and not through his adjutant.

Q. Do you, of your own knowledge, know of any changes ordered in the guard that night?—A. I do not, except that those patrols were to be sent through town and gather up those men; that all passes were up at 8 o'clock that night.

Q. By the way, where were you born and where did you live most of your life prior to coming into the service?—A. I was born in Allegheny City, Pa., and lived there nineteen years—until I went to the Military Academy.

CROSS-EXAMINATION.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. Who was the regular adjutant of your battalion, Mr. Grier?—A. At present, sir?

Q. No; who was at the time of the Brownsville affray?—A. First Lieut. L. B. Chandler, of the Twenty-fifth.

Q. Where was he at that time?—A. On detached service at Fort Sill, Okla., at the rifle competition.

Q. And you were simply acting adjutant during his temporary absence on that date?—A. Yes, sir.

Q. Had you been the adjutant of that battalion during the other interval you mentioned?—A. I had been the acting adjutant for the time I mentioned, insomuch as the regular-appointed battalion adjutant was assigned to a company, commanding a company.

Q. Have you commanded a company during your service with the Twenty-fifth?—A. Yes, sir.

Q. What time?—A. I commanded a company in 1903 while at the maneuvers at Fort Riley, and commanded a company in 1904 at the National Rifle Match at the same place, and on and off at different times; never longer than three or four months at a time.

Q. You had nothing to do with the companies during the rifle competition as a company commander?—A. No, sir.

Q. Are you positive as to the dates when those rifle competitions occurred—or target practice, I mean?—A. I am not positive, but to

the best of my recollection in the Department of Missouri the months for target practice were May, June, and July.

Q. Were they not April, May, and June?—A. Possibly so; I am not positive on that.

Q. When you left Niobrara to come to Texas, the target-practice season was over?—A. Yes, sir.

Q. And everything was packed and sent directly to Brownsville, was it?—A. Yes, sir.

Q. Taking up that question of the hotel clerk at the Miller Hotel, did you report that to Major Penrose?—A. I did not; no, sir.

Q. Why not?—A. I did not regard it at the time as being of any importance.

Q. And it was simply called to your mind as a result of what occurred on the night of the 13–14?—A. Yes, sir; the first time I ever mentioned it was in Colonel Lovering's inspection, when he asked me the question direct, and then I recalled that particular event.

Q. Now, about this drinking at the bars: Do you know anything about any feeling on the part of the men that was brought to your attention personally?—A. No, sir; I do not.

Q. You know nothing personally as to the effect this produced personally on the men?—A. I do not; I never heard them say a word about it.

Q. Was anything reported to you officially or unofficially as coming from the men?—A. No, sir.

Q. Do you know officially anything about the status of the so-called Tate-Newton affair at the time this thing occurred—this shooting, I mean, at Brownsville, on the night of the 13–14? What was the status, if you know, of the Tate-Newton affair, officially?—A. Two days after the shooting took place the commanding officer sent a letter of complaint to Mr. Vann, the head of the customs inspectors, complaining of Mr. Tate's actions in the Newton affair, and requesting him to take some action.

Q. Well, had any reply been received from this letter that you know of, officially, on the night of August 13–14?—A. I don't think there had been.

Q. So the matter was still under investigation?—A. Yes, sir.

Q. Do you know whether, as adjutant or otherwise, any reply at all was received by Major Penrose in regard to his request for further investigation of it?—A. I do not; I never saw it; no, sir.

Q. Do you know personally, or was it brought to your attention officially, as adjutant, of any feeling on the part of the men arising from this, further than with the individual affected, to wit, Private Newton?—A. No, sir; I don't think there was.

Q. If it wasn't brought to your attention officially, was it otherwise?—A. It was not.

Q. Where was your desk with respect to that of Major Penrose, the commanding officer?—A. The same relative position these two desks are now in. My desk was here and the commanding officer's there; only his desk, we will say, was moved farther in that direction there. They were both in the same room and at right angles to each other.

Q. Were you in front of him? When he sat at his desk, did he face toward your desk?—A. He faced the door of the office, directly across, like that window there from that desk, and my desk set back

here against the wall, and I faced the door going into the sergeant-major's office.

Q. And those were on walls perpendicular to each other—the outside door and the sergeant-major's door?—A. Yes, sir.

Q. In other words, you were on Major Penrose's left front and he faced the door of entrance to the office.—A. Yes, sir.

Q. A person coming into the door, then, passing up to see him, would pass directly in front of you?—A. Yes, sir; he would have to.

Q. Now, you spoke of an affair known as the Adair affair, which I think was a question of a man losing a pencil. When was that brought to your attention, and how?—A. I spoke to the man myself in regard to it.

Q. When was that?—A. When he was orderly at headquarters.

Q. What date was that, do you remember?—A. That was about sometime the first week of August; I should say between the 3d and 10th of the month.

Q. Wasn't it after pay day?—A. My recollection on that is not clear, but I don't believe it was; I believe it was before pay day.

Q. Well, how did you get hold of it; had you talked it with him? Who had spoken to you about it; who had brought it to your attention?—A. I do not remember how I first heard about him having the trouble; but one day he was orderly to the commanding officer, and I just asked him what that trouble was he had the other day in Matamoros, and he told me the whole thing.

Q. Did you investigate the customs officials to ascertain if it was their custom not to examine people without packages, or how did you get that knowledge?—A. My own personal experience.

Q. So far as your own personal experience was concerned, you had not been examined by the customs officials unless you had a package?—A. Yes.

Q. You don't know whether that was general or whether it simply applied to officers of the Army?—A. I do not know it, and I did not know it at the time this thing occurred. I found out afterwards when I stayed down there—when I was left behind.

Q. How did you get at that information?—A. By going over to Matamoros and back.

Q. So that at the time you don't know that that was the custom?—A. I did not, except I had heard them say in town that unless you had a package of some kind that you could easily bring things in from Mexico.

Q. There was no objection made unless you showed a package?—A. No, sir.

Q. Well, do you know of any sentiments created in the minds of any of the men in regard to that thing? If so, what were they?—A. I never heard any more about it after I spoke to Adair about it himself.

Q. Did you ever hear of it creating any sentiment or otherwise?—A. No, sir.

Q. What was the attitude of the man himself when he spoke about it?—A. He laughed about it.

Q. That is, Adair himself?—A. Yes, sir.

Q. Did you mention any other circumstance or incident in your direct examination in the nature of a conflict between the individuals of the Twenty-fifth Infantry and the people of Brownsville?—A. Yes, sir; I believe I referred to the Reid affair, if I am not mistaken.

Q. Tell us what the Reid affair was.—A. The Reid affair was: Private Oscar Reid, of C Company, and Corporal Charles Madison, of the same company, went over to Matamoros one night about a week before this shooting occurred and while there Reid became intoxicated, and upon recrossing the river he got into an argument with the boatman in regard to the fare, which continued until he got to the American shore, and when he persisted in arguing with the boatman in regard to it a man on the dock who was interested in the ferry shoved him off the dock into the river.

Q. That is the story as it came to you?—A. Yes, sir.

Q. Do you remember when that was?—A. I think it was about a week before the shooting took place; maybe not that long; it was in a week, though.

Q. Did you hear any complaint made by this man about it—hear of it?—A. No, sir; I heard about it first from Captain Macklin, his company commander.

Q. Do you know whether this was brought to the attention of the commanding officer officially or not?—A. I do not.

Q. Do you know whether the Adair affair of the lost pencil was brought to the attention of the commanding officer?—A. I feel pretty sure it was not.

Q. Do you feel the same assurance about the other—that is, it wasn't brought to Major Penrose's attention officially?—A. I am not certain about that. I was told by this man that was with Reid, Corporal Madison, that Reid got what was coming to him; that he, Madison, had told him to shut up and quit his fussing and come on home; that he persisted in it and got what was coming to him.

Q. In other words, he was drunk, and it was reported to you by Corporal Madison, who was with him, that he had gotten what he deserved?—A. Yes, sir.

Q. Did you ever hear of any resentment on the part of the men about that?—A. I did not.

Q. It never came to the office officially during your presence there?—A. No, sir; it did not.

Q. Did you ever hear any question of resentment raised about any of these things until after the 13th of August?—A. I did not.

Q. That was when the discussion of it commenced?—A. Yes, sir.

Q. If it was before that, there was no appearance of it by the officers—at least, by yourself?—A. No, sir; if they talked about it, it must have been among themselves in barracks.

Q. Who reported that to you about "No damn nigger could bring anything through him?"—A. That is what Adair told me the inspector said to him.

Q. Mr. Grier, do you know where the recruit depots are in this country?—A. I know there is one at Columbus Barracks and there is one at Jefferson Barracks and there is one at Fort McDonald [McDowell], Cal.

Q. You don't understand, then, when you said there was a depot at Mobile, Ala.?—A. I meant a recruiting station.

Q. As a matter of fact, we only have three recruit depots?—A. I think so.

Q. There are certain depot posts under the late order?—A. Yes, sir.

Q. So when you said depot, you had in mind the place where the men were recruited from?—A. Yes, sir.

Q. Have you any sort of idea or knowledge in your mind as to where any definite proportion of the men of that battalion came from?—A. No, sir; I have not. I never tried to figure out where all those men came from.

Q. And these things that you recollect—how did you get this information? From using the muster roll or what?—A. From seeing them on the description and assignment cards. Whenever a recruit was assigned to the post and I was assistant to the adjutant or when I was doing the work myself, true copies had to be made of the card, and it was my business to compare those true copies before it was sent to the commanding officer for signature, and in that way I would notice a particular individual; I might notice he was recruited at Mobile, or something of that kind.

Q. Now, Mr. Grier, I wish you would tell the court as fully as you can all of the order that Major Penrose gave that night to you to transmit to the company commanders about the rescinding of passes, and what, if anything, was to happen besides the rescinding of the passes.—A. Major Penrose told me to see all company commanders and notify them that all passes would be up at 8 o'clock that night—the night of the 13th of August; that this order would be published to each company at retreat, and that all men who were not found in the garrison at retreat patrols would be sent out immediately afterwards at stated intervals and gather them in; make them return to the garrison.

Q. Was anything said in this order about men being kept in after 8 o'clock?—A. Yes, sir; practically so. The passes were up at 8 o'clock and anybody out after that would be absent without leave.

Q. And you actually gave those orders to the company commanders?—A. Yes, sir; Major Penrose told me that he had already told Captain Macklin, the officer of the day, himself; that I need not see him.

Q. So the only two company commanders that you had to see were Captain Lyon and Lieutenant Lawrason. Is that correct?—A. Yes, sir.

Q. You don't know anything more about the call of the mayor, Major Combe, and Mr. Evans than the fact that they had called and made a complaint?—A. That is all.

Q. You didn't see them at all?—A. Simply what Major Penrose told me himself.

A. This Evans incident; that was in your mind as a result of the conversation that Major Penrose told you he had had with these two men?—A. Yes, sir.

Q. And that was, you understood, the cause—the moving cause—for keeping the men in that night?—A. Yes, sir.

Q. And you understood that they were kept in—what purpose was it for keeping the men in?—A. For fear that those men on pass in Brownsville might have some trouble with people in town who were friends of the Evanses.

Q. Was it that there was a feeling on the part of the men against the citizens, or the reverse?—A. The reverse; that the citizens would make an attack and probably waylay one or two of those men on pass and beat them up out of revenge; that was the idea I got of it.

Q. That is the impression you got from Major Penrose, that it was

for the protection of his men against the people of the town that he had given these orders?—A. Yes, sir.

Q. You were not given to understand that there was any feeling at all on the part of the men in the post against the people of the town?—A. No, sir.

Q. You say you went to bed about 12 o'clock?—A. No, sir.

Q. Between 10 and 11 o'clock, wasn't it?—A. Yes, sir.

Q. Mr. Grier, go to the map there and show us where your quarters were.—A. (Witness goes to map.) My quarters were right here, sir; No. 5.

Q. Anybody on the other side of you in No. 6?—A. Nobody in there; it was vacant.

Q. Who lived in No. 4?—A. Lieutenant West, but he was absent at Fort Sill.

Q. Anybody in No. 3?—A. Captain Lyon.

Q. Who lived in No. 2?—A. Nobody.

Q. And 1?—A. Nobody.

Q. And the next house was the commanding officer's?—A. Yes, sir; the next house was Major Penrose's.

Q. Then, you went from your house, No. 5, when you went about 15 yards, you say, to Captain Lyon's quarters?—A. Yes, sir; and then struck out for that path that goes across there on the map to C Company.

Q. That would be right directly on your road to C Company barracks anyway, wouldn't it?—A. I figured that it would be on the line that I would meet Major Penrose going from his house toward B Company.

Q. When you heard this first shot, did you dress as rapidly as you could?—A. Yes, sir; I did. I put on my shoes over my bare feet, pulled on a pair of khaki trousers, blouse, and my hat and my revolver.

Q. You have had considerable experience as a cadet in getting dressed rapidly, havn't you, Mr. Grier?—A. Yes, sir.

Q. Now, with respect to the time it took you to dress as a cadet, how long did it take you to dress and get out that night?—A. Well, it took me a little longer, sir, because I had to open this trunk, lift it up, reach in the tiller of the trunk and get a small—it had been a fig basket but at that time it was filled with revolver ammunition—and I reached in there and got some ammunition for my revolver and stuck it in my pocket and then ran.

Q. You ran, did you?—A. Yes, sir.

Q. Is that the only difference in the time it took you to dress then and the time it took you to dress as a cadet?—A. That is about all, sir.

Q. In other words, you got out as quickly as you could, and get that ammunition?—A. Yes, sir; I knew when the call to arms went and that shooting was going on that something serious was occurring.

Q. You were on the stairs, you said, when you heard Major Penrose give the order to sound call to arms?—A. Yes; I was just going down the stairs and there was a side window in the house right at the head of the staircase and that was open and I distinctly heard him say to sound call to arms.

Q. Did you hear him say that more than once?—A. I heard him say that several times.

Q. Where did you locate him by the sound at that time?—A. I should judge that Major Penrose must have been out on the parade at or near the front of his house; then later on I heard him give the command to fall in when he was about in the center of the parade ground near this walk that goes over to C Company.

Q. That, you assumed, from the location of the voice, or how?—A. From the location of the voice; yes, sir.

Q. Where is that window that you say—give us an idea where it is—the window that you must have heard from the opening?—A. Right here, sir; it is not marked on there.

Q. It is on the east side?—A. Yes, sir; there are two bedrooms, and there is an east window in the east bedroom and an east window in the back bedroom and the stairway runs down from the back of those two rooms.

Q. Are you positive that there had been no call to arms sounded until after you heard Major Penrose give that order sound call to arms?—A. Yes, sir.

Q. And are you positive as to the direction from which the call was first sounded?—A. There is no doubt but that it was sounded from the guardhouse first.

Q. And you are equally certain that it was sounded afterwards over by the barracks?—A. Yes, sir; probably by every musician; probably all four in the two companies—maybe five.

Q. You don't pretend to say you know how many?—A. No, sir. It seemed to me that all were blown over there.

Q. You assumed that because that was the orders, and you heard a lot of other bugles blowing?—A. Yes, sir.

Q. Major Penrose had been over in front of the quarters—the barracks—an appreciable time before you got there?—A. He was; he must have gotten there a couple of minutes before I did.

Q. Now, we want to know whether all the shooting you heard with the exception of those two first shots was high-power shots or shots from high-power rifles or not? Tell the court now, as near as you can, what you recollect of the sounds of that firing, commencing right at the first.—A. As to those two pistol shots first, then a good volley, then a ragged volley, and then about 20 shots like fire at will; outside of the first two shots, those were from high-powered rifles. That stopped, as I stated, when I got to the C Company barracks, or approximately near there, but the firing up town continued for some time after I formed the company, and that was from mixed arms—from rifles, revolvers, and shotguns.

Q. About how long did that continue after these volleys ceased?—A. I should say three or four minutes.

Q. Could you locate that at all, or were you listening with that in view?—A. No, sir; I did not notice anything more than the sounds of it; it seemed to be quite a distance from the post.

Q. The only thing that you heard coming over the post were these shotgun shots?—A. Yes, sir; what I took to be that.

Q. Then there was some shotgun shot while you were going across there?—A. Yes, sir; if I was not mistaken in that; there was, undoubtedly.

Q. That must have been mixed up with the rifle shooting, wasn't it?—A. That was at the time the rifle shooting was going on, but I don't remember of hearing any shotgun report at that time. It was

quite possible I would not hear it in the discharge of those high-powered rifles.

Q. But the distinct impression was created in your mind that there was shotgun firing because you heard these shots falling around?—A. Yes, sir; and I afterwards felt that I could not have been mistaken, when a man at the hospital said there were several shots came up that way.

Q. That simply confirmed you in the impression created in your mind at that time?—A. Yes, sir.

Q. Were there any other calls sounded that night than those you have testified to? The call to arms which came from the guard-house in response to Major Penrose's order, and then the taking up of it by the musicians?—A. No, sir; I don't remember but one call that night, the call to arms.

Q. How long did the firing keep up altogether after the call to arms was sounded?—A. Well, what do you mean?

Q. The whole business, town and all?—A. After the call to arms?

Q. Yes.—A. I should say about six to eight minutes.

Q. In the formation of this company, you said there was a good deal of confusion. What was the nature of that confusion? What do you mean? Explain it a little more fully.—A. On account of the fact that the men believed the barracks were being shot into, they wouldn't allow a lamp to be lighted or a lantern, fearing to draw the fire into that particular barracks. As a result, when they got out of bed to get their clothes and get their arms and ammunition they got to running around there and jostling each other and they could not find anything hardly that they owned.

Q. Well, did you see quite a number of men in this semidressed condition that you spoke of?—A. Yes, sir; those first men that I saw get out of C Company, some of them were down there in their under-clothes; some without shoes.

Q. Now, how long after you got the order to form this company, or to take command of this company, was it before you commenced to count them, or went along the line?—A. Well, practically no time at all, sir, because I saw just as soon as the acting first sergeant started to call the roll that he did not know it. He jumped from a sergeant to a private and back to a corporal. I saw he did not know the roll and I shut him off.

Q. And you shut him off?—A. Yes, sir; I said quit it, and I went along the line.

Q. Did he go with you?—A. Yes, sir.

Q. And as you saw any men not properly equipped you sent them back?—A. Yes, sir.

Q. What did you do immediately after that?—A. I went right inside the barracks. I think I counted 52 men there, and I knew there ought to be 60, and naturally I went inside.

Q. Where were these men that you said were disputing about the ammunition—this Artificer Rudy and the quartermaster-sergeant?—A. They were right at the door to the ordnance storehouse.

Q. Was that upstairs or downstairs?—A. Downstairs.

Q. Was it on the garrison side or on the town side?—A. On the garrison side.

Q. Then how close to the exit on the garrison side—that is, the doorway?—A. About as far as from here to that table.

Q. How long did you stay there?—A. I stayed there long enough to order Sergeant McMurray to open that up and open up the box of ammunition.

Q. Did you order an original box opened?—A. Yes, sir.

Q. You are sure about that?—A. Yes, sir.

Q. Did you then go upstairs?—A. Yes, sir.

Q. Did you run upstairs?—A. Yes, sir.

Q. How long did you stay up there?—A. Just a minute; I saw that man up there.

Q. What man was that?—A. I don't know what his name was; I would never be able to recognize him again.

Q. The man that had that gun without a bolt?—A. Yes, sir.

Q. How many men were up there at that time?—A. He was the only one, I think.

Q. The rest of your men at that time had gotten down and outside?—A. Yes, sir. In the meanwhile the quartermaster-sergeant—those new boxes of ammunition are put up with a thumbscrew, and it doesn't take but a minute for the men to cut that and open the box of ammunition.

Q. Did you send that man downstairs?—A. Yes; I sent that man down ahead of me.

Q. So when you went down, so far as you could determine, there were no more men upstairs?—A. No more.

Q. Where did you go from there?—A. I went on out to the wall. I came downstairs and I went and saw that ammunition being opened.

Q. Where was that issued from?—A. That was issued right in the room from a box that had been taken from the ordnance room. The bandoliers were taken right out and passed along to the men.

Q. So the men didn't come back in there?—A. They did not; that was my object in doing that, to keep those men in ranks.

Q. Now, Mr. Grier, there is an entrance to that barracks from the town side?—A. Yes.

Q. On the ground floor?—A. Yes.

Q. Could not men have come into that place when you were standing down there looking at the ammunition, or were your men outside at that time? I mean, could men have come in from town without your observing them?—A. No, sir; I don't think so. Of course they might have come in while I was upstairs.

Q. Did you see any men who gave any indications whatever of having been running or of exercising very vigorously?—A. No, sir.

Q. There was nothing of that kind to arouse any suspicion of yours at all?—A. No, sir.

Q. If there had been any such thing would you have noticed it, do you think?—A. I may not have, because I was impressed with the idea that the post had been attacked, and naturally I would not look for anything like that in the men.

Q. You didn't see any men coming in from that direction?—A. No, sir; I did not.

Q. And they didn't come in—at any rate while they were issuing that ammunition?—A. No, sir.

Q. And if they did come in, it must have been previous to that?—A. Yes, sir.

Q. As soon as you got that issued it was taken out and passed along the line?—A. Yes, sir.

Q. So, at that time the only men who were out of your formation, as far as you know, were the men actually engaged in this issue?—A. Those were sergeants.

Q. Now, which way did you pass around to your designated post in front of the barracks?—A. By the east, sir.

Q. Did any men join your company after you started the formation there?—A. They did not.

Q. So that from that time on there no men joined the company?—A. Not so far as I know, sir.

Q. If any men had joined the company coming through the barracks would you not have seen them or heard them? I mean during the time you were forming there—that you were back of the company?—A. When I was in back of the company?

Q. When you went around in rear of the company?—A. Oh, no; they could not have run in then; if any of them came at all, they must have come in while I was upstairs.

Q. And you were up there how long?—A. I was only up there long enough to find out what was wrong with that man; less than a minute, I should say.

Q. Well, during the formation there, while you were counting this company, did you see any evidences of this at all—of men coming in from any other place than from the barracks?—A. No, sir; I did not.

Q. What is your best judgment as to that fact; did any men join your company from town after you got over there and joined the company?

Assistant judge-advocate:

I object to that question; it is an opinion pure and simple.

Q. Was there any evidence of this apparent to you?

Counsel for the accused:

He was right there; we want to know what his opinion is; he is the best judge we can get.

Assistant judge-advocate:

The question in its latter form, I have no objection to it. If it is for the second question as read, there is no objection to that.

(The reporter here reads the entire question.)

Assistant judge-advocate:

I object to those two questions going in in that form as calling for an expression of opinion.

(At the request of the court, the question objected to and the objection and reply thereto was read by the reporter.)

The accused, his counsel, the witness, the reporter, and the judge-advocates then withdrew, and the court was closed, and, on being opened, the presiding officer announced, in their presence, as follows:

I am instructed by the court to announce that the objection is not sustained. The question will be answered.

(The question was again read.)

A. There was absolutely nothing to warrant the belief that any man joined that company from the time I took charge of it until I put it behind the wall.

Q. What did you do, Mr. Grier, from the time you put that company behind the wall there in its position until you were relieved—you, yourself? I want to know what you were doing during that time.—A. I personally extended that line in conformity with the orders given me by the commanding officer, and during the entire time I was on duty with the company I walked up and down its length.

Q. Now, tell the court, Mr. Grier, where that company was posted. Go to the map there and make it clear, as near as you can figure it out.—A. The company was formed here on the company parade in front of C Company barracks and an interval here to the east between C barracks and the vacant barracks out on this road that runs parallel to the quarters, and then was extended in line of skirmishers eastward, the orders being that my left would rest on the right of B Company. Now, B Company's line came up approximately to the center or in rear of the center of C Company barracks, and there should be indicated on this map here a rear similar to the one shown there at B Company. Anyway, to the right of B Company was the west of that rear and the left of C Company was to the east, and the company extended down to this road here when I had it. There is a mistake there.

Q. Isn't there a road there?—A. There is a road there that goes down in front of the guardhouse; the guardhouse is shown along on there; it comes right down to the road, and the post exchange does, also. The post exchange is here in this corner of the road and the guardhouse is down on the road.

Q. Well, how far around did you extend, Mr. Grier, with your company to your right?—A. To my right down to this——

Q. You didn't go out as far as the noncommissioned officers' quarters at that time?—A. No, sir; not at that time; I believe that was done later.

Q. You do not know of your own knowledge?—A. No, sir; I do not. When I had it the company was from the middle of C Company barracks to here—middle of that road there.

The presiding officer:

If there is no objection, I think it has been established that the map is incorrect, and unless it is material——

Counsel for the accused:

It is not material. I just wanted to show where he was and what he was doing.

A. I can explain in another way to the court. That line from C Company, from the rear of its own barracks, extended so that it went beyond the guardhouse—it covered the guardhouse from the town.

Q. Tell us where that wall ends, Mr. Grier. Show us on the map, with respect to the guardhouse and the vacant barracks.—A. My impression is that that wall—I will not be positive—ends about here, slightly from the center of those barracks (indicating a point about opposite from Adams street).

Q. What orders were you given, Mr. Grier, in regard to the firing by your men while on this line—this outpost?—A. The men would not fire unless directed to do so by their officers.

Q. And in case they were fired upon what were they to do?—A. They were to wait for the command from an officer before they returned the fire.

Q. You were passing up and down on this line then, until you were relieved by Captain Macklin?—A. Yes, sir.

Q. While you were in front of C Company did you know anything about a patrol going out from the company under the charge of a noncommissioned officer to observe the post?—A. I did when the patrol got back; yes, sir.

Q. Tell the court about that—what it was, what point and how it came to your notice, and then from that on.—A. I sent the man on a different errand from the company, and he didn't return, and when he did get back, about three-quarters of an hour after, I asked him where he had been, and he said the commanding officer asked him to go down and see if everything was all right and see if any animals had been struck by bullets.

Q. Who was this?—A. That was Corpl. Charles H. Madison, of Company C.

Q. And did he make any report to you as to the result of his observations?—A. Yes, sir; he did. He said he found everything all right down there; no damage had been done. He said that the hospital steward reported to him that there had been a couple of bullets struck the hospital, and that is about all he said, and I said you had better go right ahead and report to the commanding officer.

Q. Do you know of your own knowledge that he did report to the commanding officer?—A. No, sir; but I saw him start within 50 yards of the commanding officer, and I presume he went right to him.

Q. Now, when was this, Mr. Grier, with respect to the time that you were relieved from the command of the company?—A. Just about the same time.

Q. Do you remember whether he was down where Major Penrose was at that time?—A. I did not see him.

Q. You didn't see him yourself?—A. No, sir; I did not.

Q. Now, how long before this, if it was before it, that Major Combe had come in? Do you know that?—A. No, sir; I do not. I just got up there in time to hear the tail end of the conversation between the mayor and Major Penrose.

Q. Did you hear D Company come back?—A. Yes, sir.

Q. Well, was it before or after D Company had come back?—A. About the time D Company got back.

Q. After this Corporal Madison came back and reported?—A. Yes, sir.

Q. You didn't see him any more that night?—A. No, sir; I did not.

A member of the court:

Before we adjourn, Mr. President, I would like to ask that the court be cleared and not closed.

The presiding officer:

Mr. Judge-Advocate, please clear the court, including the witness.

(Whereupon the judge-advocate had the court cleared as directed.)

The same member:

I would like to ask the consent of the court with reference to any remarks that may be made whether or not it is the intention of the court, as the custodian of the record, to have them made of record, or whether the defense or the judge-advocate desire to do it. I here want to make a few remarks that will have no bearing, I think, on the evidence, but before I do so I would like to know whether it is the desire of both the prosecution and the defense to have everything that is said to be made of record.

Counsel for the accused:

If it is not bearing on the case——

The same member:

It has bearing on the conduct of the case.

The presiding officer:

But not on any of the evidence of the case.

The same member:

It may be stated, and if there is no objection it can be left out. I don't care to encumber the record. I am simply asking this: It is for my own information and that of other members who have expressed the same to me. There are certain distinct allegations laid here in these charges, and for my part I do not understand the bearing of the examination of a witness which relates to affairs which occurred after this was all over. What is here alleged against the accused was covered by a certain time. The matter was all over in a certain time. I don't mean to say that this had been established in evidence, but it is established in the charges. The charges relate to a certain date and certain hour and how the orders of the commanding officer were executed by his subordinates, after they went to that wall, for instance, does not seem to me to be material. What I understand the defense is trying to establish is that the commanding officer did take the precautions—the necessary precautions—he gave the necessary orders—timely orders—and it seems to me that we are wasting time in investigating what was done at 1.40 a. m. or 2 a. m., or how this officer was relieved, or whether the stable was hit, or what these reports were. I simply ask for my information.

Counsel for the accused:

We would like to state in that question, that we think if the member will read the second specification he will see that the conduct of the commanding officer on that night, and the whole of his conduct, is brought directly into question, and with your permission I will read it. (Counsel reads charge, second specification, beginning with the words, "Knowing the inflamed" and ending with "by reason of such failure," etc.)

The same member:

The etc. that you are now reading limits it by reason of which they proceed to do so and so.

(Counsel continues and reads down to the end of the second specification.)

Counsel for the accused:

In the first specification it says: (Counsel reads first specification, beginning with the words, "Did immediately thereafter and until daylight" down to and including the words "for such crime.") The time alleged was between 12 o'clock and daylight that night. Our idea is as to whether or not these precautions that were taken by the commanding officer during the period from 12 o'clock that night until daylight were such as a reasonable, prudent commanding officer should have taken. That is our position exactly, and we want to go on record as saying a great deal that was admitted in regard to those rows of the individual men, we have not seen the pertinency of it at all except that we assume it was put in to show motive.

The same member:

I can well understand that everything that occurred prior to the time the troops were stationed at the wall is a part of the res jesta and relates directly to what was done, and it seems to me it has been established, without expressing an opinion, by a number of witnesses as to what was done, and this is simply accumulative.

Another member:

I move that the matter which has been taken down by the reporter be not recorded and that we do not discuss this any further and that we clear the court.

The presiding officer:

I would like to have an expression of opinion from the judge-advocate and the counsel for the defense as to whether that should be taken down.

The judge-advocate:

As far as the prosecution is concerned, we have no desire whatever to have that appear of record.

Another member:

I think that was the understanding.

The same member:

I would like to say one more word. As I drew attention to this, of course it hardly seems necessary for a member to say that if I had thought for a moment anyone could imagine that any action that we might take or any discussion that might be taken would be prejudicial to the case, of course it would not have been begun or uttered. It isn't with that view; it is simply for the purpose, as I stated at the outset, of gaining information as to the extent the defense desires to prolong this thing by accumulative evidence on this matter, and precautions of the commanding officer on this occasion.

Counsel for the accused:

The only thing that the defense wishes to say is this: We have no control whatever of the record; we recognize the record is in the hands of the court. We purposely refrained from saying anything and this is our position.

The presiding officer:

I think the understanding was clear that this should not be made a part of the record and unless the court decided to do so.

Counsel for the accused:

May I make one more pertinent reply to the remark of the member. The defense doesn't consider that it has offered any evidence whatever; we have not yet opened the defense and we recognize the right of the court to ask us, when we have commenced this evidence, what we propose to prove. So that is what we are doing this for, but in doing so we announce the rule, which we have announced before, that we propose to go into it fully.

The accused, his counsel, the reporter, and the judge-advocates then withdrew, and the court was closed, and, on being opened, the presiding officer announced, in their presence, that the matter would remain of record.

Counsel for the accused:

Is it true, may we ask, you are going to close at the expiration of this witness's testimony?

The judge-advocate:

As far as we now know, we will rest at the closing of this witness.

At 5.20 p. m., Tuesday, March 5, the court then adjourned to meet at 10 o'clock a. m., March 6, 1907.

CHAS. E. HAY, Jr.,
Captain, Acting Judge-Advocate, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., March 6, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocates. The accused, his counsels, and the reporter were also present.

The reading of the proceedings of March 5 was dispensed with.

Lieut. H. S. GRIER, Twenty-fifth Infantry, was reminded that he was still under oath.

CROSS-EXAMINATION CONTINUED.

Q. Mr. Grier, yesterday afternoon we had reached the point where you had just left Major Penrose who was at the time in the presence of Doctor Combe, and I will take it up from there. What instructions did you receive upon being relieved by Major Penrose at that time, if any? If you received no instructions what did you do?—A. I was ordered by Major Penrose to tell Captain Macklin that his company would go on guard immediately and remain on until reveille. Major Penrose said: "After you do that you may go home."

Q. And you did go home?—A. Yes, sir; that is, I went to Captain Lyon's quarters.

Q. Did anything else occur that night?—A. Not that I recollect, sir.

Q. You stated in your direct evidence that in going across from your house first that you heard somebody rushing toward you in the dark that turned out to be Sergeant Harley. Why did you not see him, Mr. Grier?—A. For one thing the night was too dark to see anybody until they were right up on top of you; that is, to recognize them.

Q. What kind of a night was it? Describe it.—A. It was a starlight night, but the night was dark.

Q. You didn't know anything personally about C Company—how it was equipped with ammunition, did you—of your own knowledge?—A. No, sir. In all the time I had been in the regiment——

Q. I asked you if you knew anything about how C Company was equipped with cartridges that night.—A. What do you mean?

Q. Do you know what kind of cartridges they had in their possession, of your own knowledge? The men, I mean.—A. I know what they had when they were issued; yes, sir.

Q. You have explained the issue; but I want to know, did you know of your own knowledge what was issued to them?—A. Yes, I did; as adjutant, at guard mounting I know that the men of C Company had guard ammunition, as everyday occurrence.

Q. You testified, in direct examination, as follows—speaking of the order about breaking open the gun racks: "Q. Do you know of your own personal knowledge who gave the order?—A. I do. Q. Of your own personal knowledge?—A. Yes. Q. Please state it.—A. Major Penrose. Q. Did you hear him give it?—A. I did not hear him give it." Will you explain how you knew of your own personal knowledge that Major Penrose had given the order?—A. Major Penrose told me when he assigned me the command of the company that he had just given orders for them to break open the racks in C Company.

REDIRECT EXAMINATION.

QUESTIONS BY ASSISTANT JUDGE-ADVOCATE.

Q. Mr. Grier, I think you stated that the report made by Corporal Madison to you, with reference to conditions at the quartermaster corral or stables, was made about the same time as the return of Captain Lyon's company. Is that correct?—A. Just about.

Q. Do you know whether it was before or after the return of Captain Lyon's company?—A. I do not.

Q. You stated that immediately after making this report to you—in fact before the corporal had entirely finished making his report—you directed him to go and report to the commanding officer. Is that correct?—A. That's correct.

Q. And the commanding officer at that time was only 50 paces, I think you said, from you, or 50 feet?—A. Fifty yards, I think.

Q. And Corporal Madison started in that direction?—A. Yes, he did.

Q. So that in case he went directly to the commanding officer his report, as to conditions at the quartermaster corral and elsewhere, must have been made to Major Penrose before Mayor Combe left the vicinity?

By counsel for accused:

We object to that question. Witness said he didn't hear the report to Major Penrose and wasn't present, and he can't possibly answer the question; and it is an argumentary question besides, and objectionable on that point.

By the assistant judge-advocate:

I will withdraw the question.

Q. How long afterwards was it that you went over to where the commanding officer was and heard some part of the conversation—the latter part, you said, of the conversation between him and Mayor Combe?—A. How long after what?

Q. How long after Corporal Madison reported to you?—A. Well, practically about the same time.

Q. Did Corporal Madison go ahead of you or behind you?—A. He went ahead of me.

Q. To the best of your recollection how much before you did he go—a minute, or the same time, or two minutes, or what?—A. I should say about a couple of minutes. I stopped and talked to Captain Macklin and told him where his company was.

Q. You were awakened from sleep by the sound of some shots, I believe you testified?—A. Yes.

Q. Are you positive that those were the first shots fired that night?—A. I am not.

Q. When C Company was extended along the wall, would it have been impossible for any men to have joined on the extreme right of the company in the darkness without being seen by you in case you were at the other end of the line at the time?—A. It would have been possible, but not probable.

Q. Is it not possible to enter the squad room, the squad room upstairs in the barracks, by the stairway in rear of the barracks?—A. Yes.

Q. At the time you counted the men and satisfied yourself that each was provided with a rifle and ammunition, were you looking for evidences of men having come back from town, or were you merely checking over the men to see that they were armed preparatory to taking them out and putting them on a defensive line?—A. I did not look for any men running in.

Q. You did not at the time suspect that there was any probability that men of the company had taken part in the shooting?—A. I did not. Didn't think it was a probability at all; never occurred to my mind.

Q. So that when you stated that you did not see any evidences of men having returned in a hurry, you were not looking for such evidences or signs?—A. I was not looking for any evidence, but I should regard it as a very unusual performance, and would have remembered it if I had seen any men run in after the company was formed.

Q. Were you not yourself at this time more or less excited?—A. Not particularly so.

Q. During the period that the firing of high-power rifles was going on, did you hear any other kind of firing?—A. I did not—don't believe I could have heard it.

Q. About how many shots do you think were fired altogether by these high-power rifles?—A. I should say about 50 or 60.

Q. All together?—A. All together.

Q. Was any effort made, so far as you know, to ascertain the truth of Adair's story of ill treatment at the hands of the customs authority?—A. I don't know.

Q. When you took your family over to Captain Lyon's quarters, how long did you remain there?—A. I did not remain; I simply took them along the walk and left them in front of that quarters.

Q. Can you be positive that the call to arms you heard was the very first one that was sounded that night?—A. I am absolutely positive it was.

Q. Did Major Penrose, prior to the shooting, ever express in your presence his opinion as to whether or not a soldier was responsible for the assault on Mrs. Evans? If so, please state the circumstances and what were his words.—A. He did not. He said that if he could find sufficient evidence against any soldier in his command that would commit an outrage like that he would endeavor to get him the limit.

Q. Did he not also state to you that in his opinion no man in his command had done the thing, or words to that effect?—A. He did not. He said they seemed to think that a soldier had done it.

Q. By "they" whom did he mean?—A. Mayor Combe and Mr. Evans.

Q. He said they seemed to think a soldier had done it?—A. Yes; but they couldn't produce any evidence to prove it.

Q. Did not Major Penrose add something further with reference to his own opinion as to whether or not a soldier had done it?—A. He did not.

Q. Will you please state, to the best of your recollection, the entire conversation as it occurred?—A. Upon giving me the order in regard to passes, etc., as already given, on the night of the 13th of August,

Major Penrose stated that Mayor Combe and Mr. Evans had been to see him within half an hour of the time that I reported to him and had claimed that a negro soldier had assaulted Mrs. Evans the night before, shortly after she had returned from riding; that this soldier had grasped her by the hair as she was leaning over the fence, and that she screamed and the man ran; that they were unable to identify the man, except that he was a large black negro, dressed in a blue shirt, campaign hat, khaki trousers; that he had offered—that Major Penrose had told him that he would—that he had several men in the command that would answer that description, and if they desired he would have them up and Mrs. Evans could take a look at them, whereupon Mr. Evans said he did not think his wife could identify the man other than by the description given. Major Penrose then went on to say, "If that was one of those men did that thing, I wish to God I could get ahold of him and get him the limit." That's all.

Q. So that, aside from what is implied in Major Penrose's language, he never expressed to you his opinion as to the probability or possibility that a soldier committed this crime?

By counsel for defense:

We object to any further questions of that kind. The witness has answered that twice; stated that he did not give any such opinion. He has twisted it another way and asked him all he did give, and he has given that. It is unimportant, but when a witness has answered a question twice we think it clearly within our bounds to object to further answers.

By assistant judge-advocate:

I will withdraw the question.

EXAMINATION BY THE COURT.

Q. Did you apprehend any trouble the night of August 13–14, 1906, when you first retired that night with your knowledge of conditions existing at that time?—A. I did not.

Q. Do you know anything, from your personal observation, at the formation of C Company at call to arms of the whereabouts or actions of the noncommissioned officer in charge of quarters who is supposed to have the keys to the armracks—Sergeant Brawner?—A. I do not. I do not remember seeing Sergeant Brawner.

Q. Why was it necessary to break open the gun racks of C Company with an ax?—A. I don't know, of my own personal knowledge.

Q. You say you don't believe men could have cleaned their rifles while they were at the wall. Explain why not.—A. Because I don't believe the brush wiper carried in the butt of the new gun, without accessories, is sufficient to remove powder stains from a gun barrel.

Q. How did you account for some men appearing with guns before the armracks were broken?

By counsel:

I don't think that is a fair inference from his evidence. We don't object to the witness answering the question, but we wish to state that it is not a fair inference from any evidence that has been introduced by this witness as yet. Don't mistake us; we don't interpose objection to it, but with that explanation we are willing to have the witness answer.

A. I didn't think of it at that time, but since the Brownsville incident I have come to the conclusion, when the call to arms sounded and

the men, some of them, found they could not get their rifles out of the racks they thought they would at least go down and be present at the formation. Some of them did this, while others stayed back until they could get their rifles before they went out.

At this point the accused, his counsels, the witness, the reporter, and the judge-advocates withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

The stenographer will please read over the last question and answer.

(The reporter then read last question and the answer thereto.)

By president of the court:

That does not exactly answer the question; if the witness will go on and explain what follows that. (Question read again.) You testified that some of the men appeared in ranks—you found some in ranks with guns, others without. How do you account for those men being in ranks with guns and others without at that time?

A. I can account for some men appearing with arms at that particular time because the order to break open the racks had been given the company before I got over there. It may be that the sound of breaking open the racks that I heard was on the second rack broken open and the first one had been broken open before I got there.

Q. How many rifles does one armrack contain?—A. I don't know exactly; I should say from 15 to 20.

Q. How many armed men did you count in ranks?—A. I counted, to the best of my knowledge and belief, 52 men.

Q. (Same question repeated.)—A. Yes; 52 armed men, when I finally checked the company complete.

Q. The number of rifles contained in two armracks not being enough to arm all the armed men you counted in ranks, where did the other men get their rifles?—A. I don't know of my own knowledge. I suppose that the noncommissioned officer got there with the keys and opened the others.

Q. Did you receive official information afterwards in regard to that point?—A. Yes, sir.

Q. What was it?—A. I heard Sergeant Brawner, the noncommissioned officer in charge of C Company quarters on that night, tell Major Penrose the following morning.

Q. Do you know where Sergeant Brawner was at the time of your verification of Company C?—A. I do not. Do not remember of seeing Sergeant Brawner at all on that night.

Q. Did you later know officially—of your own official knowledge?—A. No, sir; only what I read in the report of the inspector. I might say there that Sergeant Brawner was accounted for that night, in checking up the men on guard and sick, as "Sergeant Brawner in charge of quarters." That was the report made to me when I reported the two absentees.

Q. Who was the other absentee?—A. He was not accounted for as an absentee, sir. He was accounted for as in charge of quarters. Then the first sergeant reported two men absent on pass and I reported these to Major Penrose by name.

Q. How long after you reached Major Penrose, in front of Company B, did he tell you he could not find Captain Macklin?—A. Right away.

Q. How long was that after you had gotten up from bed?—A. About five minutes, I should say—four or five minutes.

Q. Did Major Penrose give any reason for ordering the gun racks of Company C broken open?—A. Not to me; simply stated he had ordered the racks to be broken open.

Q. Over what length of line, in yards, did C Company extend along the garrison wall?—A. About 150 yards.

Q. Considering the darkness of the night, as testified to by you, would it have been difficult for men to have joined the right of the company when you were at the left without being seen by you, or vice versa?—A. It would have been possible; but I don't believe that any man who was out would know where his company was stationed, and for that reason I do not believe it was probable that any man did attempt any such thing. It would not have been difficult, however, for a man taking chances to come in on the right of that line.

Q. After you came downstairs did you again inspect or verify the company?—A. That is the time when I verified 52 armed men in ranks. The first time I inspected there were about, as far as I could tell, 10 men absent which I wished to verify. As already stated, I found 3 of those men in barracks. The first sergeant reported to me then 4 men on guard, 1 man sick in the hospital, and 2 absentees, by name. I was satisfied then that approximately 60 men that belonged to the company were present or accounted for.

Q. Was one of the certificates to which you testified signed by the accused? That refers to the certificates you spoke of that were sent in from Fort Niobrara.—A. My impression is that Major Penrose did not make any certificate relative to the colored troops, as I don't believe he had ever served with them before.

REDIRECT EXAMINATION.

QUESTIONS BY ASSISTANT JUDGE-ADVOCATE.

Q. You stated that inasmuch as the men had only a brush wiper with which to clean their rifles, you didn't think they could have cleaned those rifle barrels thoroughly while they were along the wall; is that correct?—A. Yes.

Q. Is there not room enough in the same receptacle in the butt of the rifle for a man to carry a small piece of oiled rag?—A. Yes.

Q. Is it not customary for soldiers to do that?—A. I don't believe it is.

Q. It can be done, however, can it not?—A. It can be done.

Q. A man could use a piece of his handkerchief, could he not, or any piece of cloth, and clean the gun out there on the line, could he not?—A. Yes.

Q. While you were crossing the parade on your way to join C Company did you hear any noise of breaking open armracks?—A. I did not.

Q. Did this noise—which you afterwards found was the noise caused when the men were breaking open the gun racks in the company—did this noise begin while you were in front of the barracks?—A. It was going on when I went in front of C Company barracks after being directed by the commanding officer to take charge of that company. That's when I heard it; when I went over in front of the front door.

Q. You stated it was four or five minutes after the shooting began before you saw Major Penrose that night.

By counsel:

I don't think that was the question. I think it was when he got in front of his company, but I don't make any objection. It is practically synonymous.

A. Practically—yes; it was.

Q. Was the rifle firing up town still going on at that time?—A. It was when I reported to Major Penrose. It stopped just about the time that I went to C Company.

Q. And then after you got to C Company you had this counting up of men to do; you had to go in the quarters to look up the men that were still absent; send men back to get more clothes on; send men back to get their arms, and then personally satisfy yourself that every man had a rifle and ammunition?—A. Yes.

Q. So that, did not this counting up of men and inspection, visit to the barracks, and so on—did not that take up sufficient time for men to have gone at a run for a distance of 300 yards?—A. Certainly; it took about five minutes to do that.

Q. So that it was five minutes after you were first awakened by what you called two pistol shots until you saw Major Penrose first. You then went to C Company and it was five minutes more before you had finished counting up all the men, the inspection, etc. Is that correct?—A. Yes; that's right.

Q. And the firing ceased up town about the time you left Major Penrose, while you were on your way to C Company?—A. Yes.

By assistant judge-advocate:

I would like to state to the court that this question which I am about to ask the witness now, brings in some new matter. It was not asked on the direct examination because I did not know of it at the time—know of this occurrence with respect to which this question is being asked him, and in order to save recalling the witness later I am going to ask him now.

Q. Were you at Captain Lyon's quarters about 3.30 on the morning of August 14?—A. I was.

Q. Was Major Penrose there?—A. He came in about that time.

Q. What did he say with reference to his belief or disbelief as to whether any men of the command had taken part in the shooting of that night—of the previous night?—A. He said he didn't believe they had.

Q. Will you kindly state his exact words, as nearly as you can recall.—A. I don't recollect his exact words, but it was to the effect that he couldn't see how those men—meaning the soldiers of B, C, and D Companies, Twenty-fifth Infantry, could have engaged in that affair.

Q. Did he say anything with reference to Mayor Combe's report to him?—A. Nothing, except that he believed that Mayor Combe was mistaken. I believe Major Penrose also stated at that time that he had seen Howard, the sentinel on that post in rear of the quarters, and that Howard had told him the first shots were fired over the wall into the post.

Q. You say you did not see Sergeant Brawner that night at all?—A. I do not remember seeing him.

Q. You stated, I think, that the two men who were on pass from C Company did not return until the next morning.

A. I don't know whether I stated it or not, but that's so, they did not.

Q. Will you kindly give their names again?—A. Sergeant George Thomas; Private Edward Lee.

RECROSS-EXAMINATION.

QUESTIONS BY THE ACCUSED.

Q. You were quartermaster, I think?—A. Yes, sir.

Q. Did you, as quartermaster, give any orders about the repairing of gun racks of C Company on that following day?—A. I did.

Q. You gave the order yourself?—A. Yes, sir.

Q. What brought out this order? Tell the court the circumstances—how you happened to give the order.—A. About 11 o'clock on the 14th of August Captain Macklin came into the adjutant's office and said: "Mr. Grier, do you suppose your carpenter or blacksmith can repair those racks that were broken last night?" I said I thought they could be, and told him I would attend to it. Later on in the day, about 1 o'clock in the afternoon, he came to me again and said that the wagon had not come for the gun racks. I said: "All right, Captain, I will attend to that right away." Sent for a wagon, saw the two racks put in the wagon myself, and taken to the blacksmith shop. They were there about two days.

Q. And they were repaired by your blacksmith?—A. Yes, sir.

Q. These are all you know anything officially about being repaired, these two?—A. Those were the only two racks that were repaired by my order, and I had a rule in the quartermaster's department that no repair work of any kind would be done except upon written order from the commanding officer or the quartermaster.

Q. You said it wouldn't be difficult for these men to come into the post on the right of your line if you were on the left, or vice versa, if they were willing to take chances. What do you mean by that—take chances?—A. Well, I believe that almost every officer and enlisted man present that night believed that the post had been fired into, and a man would be taking pretty slim chances to approach any portion of that line and not run the risk of being shot, and I don't think they would have come in unless they were absolutely sure that they were going to strike into their own company.

Q. Do you recollect having seen men—armed men—in front of the company when you first got over to C Company?—A. No, sir; I wouldn't like to say.

Q. I mean members of the company actually armed with their rifles at the time you arrived there.—A. I don't recall it; there might have been; I don't know.

Q. You have not had any actual experience in cleaning these guns, have you, Mr. Grier—cleaning these rifles?—A. Yes, sir; I have. I cleaned my own rifle on the target range last year.

Q. How did you do it? To remove the powder stains, what is necessary?—A. I never used that brush wiper after the first or second attempt.

Q. How did you clean it?—A. I used the old-fashioned ramrod—brass ramrod and oiled rag.

Q. You considered that necessary in order to effectively remove all powder stains?—A. Yes, sir. I found the brush wiper streaked the interior, and had to use the other eventually in order to get it thoroughly clean.

REDIRECT EXAMINATION.

QUESTIONS BY ASSISTANT JUDGE-ADVOCATE.

Q. Is there a thong or cleaning string of any kind kept in the butt of the piece, together with the brush wiper?—A. Yes.

Q. Is that thong provided with a metal top in which a rag can be inserted?—A. Yes.

Q. And the rifle can be cleaned in that way effectively, in case one has a piece of rag?—A. Yes; it can be. I think it is a longer operation.

Q. It takes longer, doubtless, than it does with a ramrod; but in case a rifle is cleaned within a very short time after it has been fired, and particularly if only a dozen or 15 shots have been fired from it, is it a very difficult operation to remove powder stains at that time?—A. Not particularly so; no.

Q. And even with this thong and a piece of oiled rag, how long would it take a man to clean a rifle so that the barrel would show no signs of powder for a number of hours at any rate after it was cleaned?—A. You mean just the barrel itself, not the whole gun?

Q. Just the barrel and the end of the breech bolt; not the whole gun?—A. It would take five to seven minutes, I should say, to clean it well.

Q. I would like to know how long it took you, after you had counted the men and finished inspection, and so on, in front of the barracks, before you had the company deployed on the wall; that is, the interval between the time when you left the barracks with C Company until the entire company was deployed between the point you have mentioned—that sink in rear of B Company—up to the point near Adams street where you indicated the right of your company was?—A. Well, it took me about a minute to march in front of C Company barracks, around the east out to the wall; then before the right skirmisher would arrive beyond the guardhouse it would take a couple of minutes more at least.

Q. Are you sure it wouldn't have taken three or four minutes more?—A. No; I don't think it ought to take them that long to walk about 100 yards.

Q. So that altogether it was about three minutes more, to the best of your recollection, from the time you left the front of the barracks until the men were deployed along the wall?—A. Until the right skirmisher, the right man, was in his proper place it would; but in the meantime the wall was all covered by the movement.

Q. Were there any lights whatever in the vicinity of the barracks at this time, or at any time after the firing?—A. What do you mean by the vicinity of the barracks?

Q. Were there any lights in the barracks themselves other than matches struck by men looking for their clothes?—A. There was not.

Q. Were there any lanterns outside?—A. There were not that I saw.

Q. Was there a good deal of confusion there or not?—A. There was more or less confusion as a natural result from 50 men trying to find their clothes and rifles and ammunition in the dark.

Q. You stated it took about five minutes for the men to find their clothes and ammunition and get their arms and so on and for you to count them up. Are you sure it didn't take any longer than that?—A. Quite certain it didn't.

Q. Are you certain it didn't take six minutes?—A. I say when I say about five minutes I allow myself either four or six. I didn't look at my watch that night.

Q. You didn't look at your watch at all that night?—A. I did not.

Q. Will you please state just when it was you counted the 52 men? Was that immediately prior to your marching the company out to the wall?—A. It was, immediately.

Q. Immediately before?—A. I checked the company from right to left, stayed on the left flank, and gave the command "Left face," and was right in my proper position and marched the company out.

Q. So that that count of the men was done at least ten minutes after the firing began and five minutes after the firing ceased?—A. That's right.

REEXAMINATION BY THE COURT.

Q. The court would like to find out who opened the third gun rack with the key, and if the key was in the barracks why he did not open the two broken open. Can you testify on this point?—A. I can not.

By counsel for accused:

For the information of the court, we have asked, and we expect to make that clear to the court, for certain witnesses who are charged with that particular duty, as you must know. We will make a statement about that in a few minutes; I only make this as an explanation to the court.

(Further answer by witness:) I can testify to this much, sir. That the second rack was not actually broken open; that is, it was not forcibly broken to remove the guns. It was struck with the axe on the band, but had undoubtedly been opened with a key eventually, and, although I was not present, I presume from that that the non-commissioned officer got there with the key after some man had hit the rack one or two licks with the axe.

The judge-advocate announced that the prosecution here rested.

The counsel for the accused here addressed the court as follows:

At this stage of the proceeding the defense would like to remind the court of the conversation we had the other day in which question of witnesses was discussed and at which time we said that we would, by wire, ascertain the status of the witnesses and what the prospect of their being here was, and, may it please the court, I think it would be just as well to discuss the balance of this in cleared court, if we may have that privilege.

By direction of the court, the representatives of the press and the spectators then withdrew and the court was cleared.

Counsel then continued:

The court will recall that we stated at that time that we would do everything in our power to see that the witnesses came here and, further, that we would curtail our list as far as possible. That same day we sent a telegram asking The Military Secretary—

and it was sent by the judge-advocate of course—whether, if we deposited with the chief quartermaster here the necessary amount of money to indemnify the Government for any loss that might be incurred in advancing the transportation to these men, such transportation would be furnished to such witnesses as we designated that we wished sent. That telegram we were assured was sent that same day. Now, we would like to know officially from the judge-advocate whether he has received any reply; we understand he has not.

To which judge-advocate replied:

I will state officially that this telegram was sent in the neighborhood of 2 o'clock on the afternoon of March 4, and up to the present time I have received no answer.

By counsel:

Now, that could not have been formulated earlier, because it was necessary for us to discuss the question of witnesses and their curtailment, and we did that, and I wish to make a point to the court right now of one thing. The question was asked Lieutenant Grier about something that he is not charged with knowing, and when we formulated, originally, our list of witnesses, we had in mind limiting the witnesses of the Twenty-fifth Infantry, the enlisted men, to those that this court by virtue of their experience would know must be charged with certain duties, to wit, the first sergeant; the acting first sergeant; the noncommissioned officer in charge of the quarters, who would be charged with the duty of opening these gun racks, and to certain other witnesses who would corroborate certain evidence given by these officers. We felt at that time, and we feel now and without any disparagement of any other officers, certainly as to those officers of this court who have had extended experience with the colored people, that you would be able to determine whether or not these men did know of it; whether there was conspiracy in all of the other facts as alleged against the Twenty-fifth Infantry. We say that in all good faith; that was our purpose. Now, then, everyone who has ever prepared the prosecution or defense of a case must know that you must have some idea whether you are going to have the witnesses you ask for, in order to formulate any intelligent defense—outline it in your own mind. That's necessary when you put on the witnesses you know you are going to have, because certain things could just as well be left out if they can not be supported by the evidence of others or circumstances you may bring to bear to make your own mind satisfied whether it is true or not true. To-day, gentlemen, we are in the air; we don't know whether we can have these witnesses, or any of them. We know what we can prove by the witnesses who are here, and we are prepared to put them on, and we expect to put them on because we assume that is the desire of the court, but we want you to know, and we want it of record, that we feel that in going ahead in this way, if we do go ahead, that we are bound to present to you a ragged, disconnected, disjointed, unsatisfactory evidence from any standpoint you wish to examine it. We don't say that in criticism of anybody, but we say it as a fact that we want to present to your minds, so you will know the position in which we find ourselves. And with that fact before you we wish to say that we think that if this court would direct the judge-advocate to send a telegram to the War Department asking what witnesses we can expect, stating that the defense is now commencing upon its presentation of the case—and include in the same telegram, if you please, a request to hold here several, not many, some three or four witnesses that are here and under orders to go to Washington to appear before the Senate Committee, and among them I will mention this man Tamayo, the pertinency of whose evidence is apparent to you without any discussion, and there are several others. We are very glad to furnish the list of these and, if the court desires, state exactly what we purpose proving by them. We ask you to consider that, and we ask you to consider that not with the purpose, mark you, of incurring any delay, but with the purpose, as we believe, of getting the support of the court—that is, the backing of the court to this request, showing that it isn't simply the request of the defense, but that the court sees and appreciates the desirability and propriety of sending such a telegram. And that, may it please the court, is the purpose of these remarks. We are prepared to proceed this afternoon, but we wanted you to understand that we feel that without a knowledge of whom we are going to have here that we are sort of striking in the dark in regard to many points that would be of material interest to you. For instance, if we can't have those men who are charged with the duty of keeping the keys to the armracks, then we must prove that by the next best evidence we can. I only mentioned that as one instance; there are a number of other things that come in that would suggest themselves to you without going into all details and, in order to make clear just what we want, we will state that we will furnish the list of witnesses we want held here and the list we want brought here, if the court so desires.

By a member of the court:

I don't quite understand at what time counsel wanted to state to the court the line of defense—as each witness is called, or in general?

By counsel:

If the court desires the nature of this evidence we are asking for, as to what we expect to prove by each witness, we will give that, of course. We will show the pertinency of the evidence of each and all of these witnesses, if the court desires it at this time in order to base an action upon it. We will go a little further in explanation, may it please. If we know that we have got to curtail, then there are certain things we will leave out; if we are going to have all these witnesses we will, with these witnesses we are putting on now, including the accused himself, open up fully everything. That's the proposition exactly, and we think if we could get an answer to this telegram sent by the court to-day, that it would be of very great assistance to us, and, frankly, I believe it would enable us to cut right off short the examination in many cases.

By a member of the court:

I would like to know if these witnesses are material. If the counsel will state that they are material witnesses.

By counsel:

We consider them very material to the case.

The accused, his counsels, the reporter, and the judge-advocates then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to request counsel for defense to submit to the court the list of witnesses he desires to be wired for or to be detained here, and what he proposes to prove by each.

The court then took a recess until 3 o'clock p. m., at which hour the members of the court, the judge-advocates, the accused, his counsel, and the reporter resumed their seats.

Counsel for the accused:

We understand that this is to be a cleared court—this discussion.

The presiding officer:

The court will be cleared.

(The court was cleared.)

Counsel for the accused:

Now, we understood the order of the court this morning to be to furnish you with a list of the names of witnesses that we wanted the court to get for us from Washington and other points, and also the names of those who are to be retained. Subsequent to leaving the court, I was informed by the military secretary that he had the authority to retain the others already here; that, as I understand it, the court will not have to take action on; that is, on that part of my request. So, in so far as that part is concerned, I presume the court will take no action. We will give, if necessary, the names of the witnesses; we did not come to the point of giving the statements of what we expected to prove by them, but we will do so if the court desires. Now, in order that you may exactly understand the predicament in which we find ourselves—first, let me say, we asked for the following witnesses, classing them as first sergeants, although Sergeant Harley was acting first sergeant, and under that class we have Mingo Sanders, Jacob Frazier, and Samuel Harley. By these we expect to prove, of course, all the details of the formation of the companies, and the positions of the companies, and what they saw and did that night, and, of course, as the court understands, the details of their functions as first sergeants, and we do not care to go into that, because we assume the court knows these functions, and it is corroborative of all the other evidence that has been or will be introduced, as well as good evidence, and certainly the best evidence on certain things that could be produced. We ask that the quartermaster-sergeants, George W. McMurray, Thomas J. Green, and Walker McCurdy, be procured to prove in addition to the ordinary events, the functions of their office, all about the issues

of ammunition and the check up of all ammunition, arms, etc. We ask for Sergt. James Reid, Corpl. Samuel Wheeler, Private Alexander Ash, Private J. H. Howard, and Private Charley Hairston. Sergt. James Reid was the sergeant of the guard; Corpl. Samuel Wheeler was the corporal of the guard in charge of the relief then on post; and the three sentinels mentioned were actually walking post at the time, and two of them at least came into personal contact with the accused, and the others' testimony is the most important. It is scarcely necessary for me to say that you could not have more important men to testify as to what was going on in the post at that particular time than the commander of the guard and the noncommissioned officer of the guard posting the relief on guard at the time. We ask for Sergt. Newton Carlisle, William Mapp, W. Harden, O. J. Matlock, and Matias G. Tamayo, and Mack Hamilton; as to Matias G. Tamayo, he is now here, and under summons to Washington, as is also Mack Hamilton. O. J. Matlock is now here as a witness. Sergt. Newton Carlisle was present at C Company and directly connected with the breaking open of at least one of the armracks, in addition to being a part and parcel of the formation of the company, and was at the company all the time, as near as we can ascertain from everything that has been submitted to us. The other two men named are privates who are corroborative of other evidence and whose testimony we consider is of value on the events that occurred that night. Now, I wish to say right here, we have not heard a single, solitary word as to whether any or all of these witnesses are to come—not a word—under the order of the court. The other day we figured on this thing, and were prepared to cut out two of the first sergeants; I think all of the quartermaster-sergeants, and our list was reduced to the following, viz: Mingo Sanders, first sergeant, Company B, a man of twenty-six years' service, and who called the roll that night, and who came from his house to the place; and he is a very important witness for the defense, as to many things connected with the case. We are particularly anxious that we should have James R. Reid, the sergeant of the guard that night, for the reasons already given. We want D. W. O. Brawner, late sergeant of Company C, and Newton Carlisle; Brawner being the sergeant in charge of quarters and connected with this case, as you all know, and Newton Carlisle for the reasons previously mentioned. Samuel Wheeler was the corporal in charge of the relief at that time. Charles H. Madison, as the court knows, was sent out on an important function by the commanding officer, in addition to his knowledge of the event of that night. Alexander Ash we regard as a most important witness; he was sentinel on No. 4 over by the corral. J. H. Howard, Charley Hairston, were the other two sentinels on post. Charles E. Reed was the artificer of C Company, and actually broke open one of the armracks, so we are informed. We also want Sergeant Oltmans, whose initials I can get for the court in a few minutes, who was the first-class sergeant at the hospital, to show the disposition made at the hospital, and what his own personal observations were that night. He is a white man, by the way. That is our modified list.

Now, our position is simply this: We want to know whether we are going to have these witnesses or any of them, and that is all we ask this court to find out; and we want to know that so as to formulate our defense and the order in which we purpose putting it in, and we asked you this morning to send a telegram to know if these or any of them were coming on the basis that we submitted the other day, of putting up—and we are prepared to put up in the hands of the Quartermaster or any other designated agent—the cash to indemnify the Government against any loss. We certainly think that we are entitled to know whether we are going to be furnished the witnesses we are asking for, and if we are not going to be furnised them, to find out how we are going to do these things we asked for before we commenced, and that is what we ask the court to do. No one regrets the position in which we find ourselves more than we do ourselves, and we are prepared to fall in line with the wishes of the court in every way we can consistently. Frankly, I want to go on record as saying I don't see how the court can act on our modified list until they know whether they are going to furnish the other list or any of them, and I think it but fair to us and to this court that we get Corporal Wheeler, because we know he is within the department.

The presiding officer:

Was a telegram sent this morning in regard to this matter?

The judge-advocate:

There was not, sir. I have had no instructions, as I understand them, so far about this matter.

Counsel for the accused:

We haven't submitted any modified list before, because we could not hear from the first list.

The presiding officer:

Mr. Judge-Advocate, for the information of the court, will you give us that list; the stenographer can make you a copy of it there?

(Counsel prepared a list for the information of the court.)

Counsel for the accused:

All these witnesses are civilians except the hospital man, I believe.

A member of the court:

I want to ask about the two names that you put in the revised list that you did not have in the original list.

Counsel for the accused:

We did; we have two or three names in the modified list that we did not have in the original list. In making a wholesale cut out we found we could do that by inserting one or two others.

Another member:

I am still in doubt about this matter; I would like to ask the counsel to state to the court if he has any suggestion that would assist the court in procuring the attendance of these witnesses if we should decide to call them. In the case referring to civilians outside the territory in which the court sits, their testimony can only be taken by their voluntary appearance before the court. I would like to ask if they have been summoned, and if so, have they refused to come or consented to come, or have consented to come on conditions. I am in the dark as to how the Government can be reimbursed, or has the Quartermaster's Department any such arrangement as was mentioned by counsel; I don't understand how the Pay Department or the Quartermaster's Department can get them, but now that the counsel has suggested I would like to ask for any information he can give us.

Counsel for the accused:

We have stated that we would furnish the money to the Quartermaster's Department if they would send the men here, to indemnify them for any loss. If you will recall, the last telegram stated that those papers had been put in the hands of the summary court officer at Washington Barracks to be served. The court seems to be under the impression that we are asking for these witnesses to be summoned; we are not. These witnesses have been summoned, and we are now asking the court to assist us in finding out if any or all of them are going to come.

The presiding officer:

We desire this in order to enable you to know how to proceed.

Counsel for the accused:

That is our position exactly. We don't pretend to say that this can be done or can not; we have asked the question, and we have offered to put up in cash, and will put up in cash the necessary money to indemnify the Government from any loss resulting from transportation, and as purely a commercial transaction I can see no reason why it can not be done.

The judge-advocate:

May I ask the counsel in the presence of the court whether he so understands the telegram as I do? The telegram, as I understood it, referred to the three men now held before the Senate Committee, and the other men mentioned in the original application had departed for their homes, and I understood the telegram to mean that the summary court officer of Washington Barracks would serve subpœnas on the three men—I knew their names at the time, but do not know them now, except the first name was Sergeant Sanders—and any further arrangement would probably have to be made by the War Department for subpœnas on the other witnesses.

Counsel for the accused:

I don't pretend to know; all we are asking for is information. These witnesses were summoned on last Monday a week, that is ten days ago, and certainly we can not be charged with any lack of diligence in this matter. When they were summoned to be here ten days ago, that presumed that there was ample time for these men, or

some of them, to be sent here. We are in the dark, and we are asking the court if these witnesses are going to be here. As we understand it, although a witness may be residing beyond the State, if they do appear in answer to the subpœnas they will be paid transportation, and our guarantee covers the advanced transportation in cases where subpœnaed witnesses failed to make their appearance. That is our position exactly; what we want is information as to whether any or all of them are coming.

A member:

I would like to ask for some information, whether it is expected that these witnesses that were subpœnaed ten days ago were to be sent at the expense of the Government at that time?

Counsel for the accused:

That is the law. As I understand it, all the witnesses of the prosecution have been sent here at the expense of the Government, and, as I understand the law, they both stand in the same position in regard to witnesses. I have never seen any difference in the law in that regard.

A member:

Isn't it a fact, Mr. President, that the witnesses for the prosecution come at their own expense and are reimbursed?

The judge-advocate:

Stating, without the book, my understanding of the law on that subject is, that if a witness resides within a State, Territory, or District in which a court-martial is sitting, who had been subpœnaed and refuses to come, can then be tendered mileage both going and coming and one day's fee, but this provision of the law does not relate to witnesses residing beyond the limits of the State, Territory, or District in which the court-martial is sitting.

Associate counsel for the accused:

I don't think that covers the point. That is simply an act to provide for the punishment only of civilians subpœnaed who failed to appear. In case a civilian fails to appear, who resides in the district or State in which the court-martial is sitting, it becomes incumbent upon the person serving the subpœna to furnish half of it, in compliance with that; then if he fails to appear, he is punished by the district attorney of the district in which that court is sitting; but the question, as I understand it, is in the case of a witness residing out of the district in which the court is sitting, and in such case he is furnished all mileage in advance.

The judge-advocate:

I don't so understand it.

Associate counsel for the accused:

I think the question is, if he actually makes the travel then he would be entitled to the mileage.

The judge-advocate:

I think there is no question about that. The question is whether it is required to be paid in advance.

Associate counsel for the accused:

It is not required to be paid in advance.

The accused, his counsel, the reporter, and the judge-advocates then withdrew, and the court was closed, and, on being opened, the president stated, in their presence, as follows:

I am instructed by the court to request that the judge-advocate and the counsel draw up a telegram that will be satisfactory to be submitted for the approval of the court this afternoon.

The court then took a recess until 4.20 p. m., at which hour the members of the court, the judge-advocates, the accused, his counsel, and the reporter resumed their seats.

The judge-advocate:

Counsel for the defense and the judge-advocates have conferred together and have agreed to submit the following telegram to the consideration of the court: Telegram dated—

"MARCH 6, 1907.

"To THE MILITARY SECRETARY, *Washington, D. C.:*

"The court-martial directs me advise that prosecution case Major Penrose rested to-day. No information received whether any witnesses summoned to appear for defense February 26 will report. Court requests following revised list witnesses hereby summoned be furnished advance transportation and sent immediately. United States to be reimbursed for any case of travel unperformed, under guarantee Major Penrose telegram March 4: Mingo Sanders, James R. Reid, D. W. O. Brawner, Newton Carlisle, Charles H. Madison, Alexander Ash, J. H. Howard, Charley Hairston, Charles E. Reed, Francois Oltmans, sergeant, Hospital Corps. Immediate telegraphic information requested as to appearance to enable case to proceed.

"HAY, *Judge-Advocate.*"

The accused, his counsel, the reporter, and the judge-advocates then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce that the court directs the judge-advocate to send the following telegram—

"FORT SAM HOUSTON, TEX., *March 6, 1907.*

"To THE MILITARY SECRETARY, UNITED STATES ARMY,
"*Washington, D. C.:*

"Prosecution Penrose case rested to-day. Defense requests to be informed what action has been taken by War Department in reply to my telegram of March 4. Following modified list now desired by defense: Mingo Sanders, James R. Reid, D. W. O. Brawner, Newton Carlisle, Charles H. Madison, Alexander Ash, J. H. Howard, Charley Hairston, Charles E. Reed. All above former members of battalion Twenty-fifth Infantry. Francois Oltmans, sergeant, Hospital Corps. Court desires to be informed by wire whether all or any of the witnesses called for by defense will be sent.

"HAY, *Judge-Advocate.*"

The court then, at 4.50 p. m., March 6, adjourned to meet at 10 o'clock a. m., March 7, 1907.

CHAS. E. HAY, JR.,
Captain, Acting Judge-Advocate, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., March 7, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocates. The accused, his counsels, and the reporter were also present.

The reading of the proceedings of March 6 was dispensed with.

Sergt. Maj. SPOTTSWOOD W. TALIAFERRO, Twenty-fifth Infantry, a witness for the defense, was duly sworn, and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please state your name, rank, and present station.—A. Spottswood W. Taliaferro; battalion sergeant-major, Twenty-fifth Infantry. Station, Fort Reno, Okla.

Q. Do you know the accused? If so, state who he is.—A. Maj. Charles W. Penrose, Twenty-fifth Infantry.

QUESTIONS BY THE ACCUSED.

Q. How long have you been in the service, Sergeant?—A. I am serving in my twelfth year continuous service.

Q. How long have you been battalion sergeant-major?—A. I was made battalion sergeant-major May 9, 1906.

Q. And from what grade were you promoted?—A. From first sergeant, Company C, Twenty-fifth Infantry.

Q. How long had you been first sergeant of Company C, Twenty-fifth Infantry?—A. Since June 18, 1898.

Q. And previous to that where had your service been and in what capacity?—A. I had served as a sergeant in Company C and as a private in Company C all the rest of the service.

Q. Do you recall how long you had been a sergeant?—A. I was a sergeant thirty days, about.

Q. How long had you been a corporal before that?—A. I was never a corporal.

Q. Did you go with your battalion from Fort Niobrara, Nebr., to Fort Brown, Tex.?—A. I did, sir.

Q. And you arrived there when?—A. July 28, 1906.

Q. And you served with the battalion during the time of its stay at Fort Brown and Brownsville, Tex.?—A. I did, sir.

Q. You are not a married man, Sergeant?—A. I am not, sir.

Q. Where were you quartered at Fort Brown?—A. In the administration building.

Q. Whereabouts in the administration building was your sleeping room? Give it by the points of the compass, or show us by the plat over there, if you can.—A. It was to the north of the hallway, sir (indicating on map). The hallway is right here and my room is to the north. This is the hallway, the sergeant-major's office here, and my sleeping room on the other side of the hall, right here.

Q. So that your sleeping apartments were on the north side of the administration building?—A. Yes, sir; north side of the hallway, facing on the parade.

Q. You were in Fort Brown on the 13th and 14th of August?—A. Yes, sir.

Q. Were there any unusual orders given that day, Sergeant, that came to your notice, in regard to the command?—A. No direct orders to me.

Q. Did you hear of any orders that effected the command on the 13th?—A. I did, sir.

Q. At what time and how did this notice, this order, come to you?—A. It was while at supper, between 5 and 6 o'clock, that Sergeant Harley, acting first sergeant of Company C, told me that all passes had been countermanded and the men ordered to be in barracks about 8 o'clock. I asked him what was the cause of this order, and he said it was reported that some soldier had frightened a white lady on a horse downtown.

Q. Did you understand by this order that the men were to remain in the post after being in at 8 o'clock?—A. I did, sir.

Q. Was that stated to you specifically?—A. It was not, sir. Only gathered from the statement he made.

Q. That the men were to be in at 8 o'clock and remain in?—A. That nobody was to be allowed out—that was stated specifically—after 8 o'clock.

Q. When did you say you first heard this?—A. It was between 5 and 6 o'clock.

Q. And where were you when you heard it?—A. At supper. C Company's——

Q. Did you take your meals with C Company?—A. Yes, sir.

Q. Did you hear any confirmation of this order afterwards? If so, under what circumstances?—A. In returning to the adjutant's office I passed near Company B and Company D. These companies were on retreat at the time and I heard the first sergeants saying something to those men about not being allowed out after 8 o'clock and also saying something to the noncommissioned officers about going out into the town and rounding up the men.

Q. You heard that they were to send out noncommissioned officers to round up the men?—A. Yes, sir.

Q. Where did you go then?—A. I went to the adjutant's office.

Q. And how long did you remain there and what were you doing?—A. I had some work to finish. I remained there probably an hour and a half or nearly two hours, it might have been—not quite two hours. No; I don't know exactly how long I remained there. It wasn't very long.

Q. Going back to this order—did the acting first sergeant, Sergeant Harley, of C Company, give you the source of the order or from whom he got it?—A. He told me that Captain Macklin had given him the order.

Q. Where did you go when you left the adjutant's office, Sergeant—the administration building?—A. I walked down to the barracks, and from the barracks I walked out up the street that separates Fort Brown from Brownsville.

Q. Yes. Did you meet anyone on that street?—A. I met Corpl. Charles H. Madison, of Company C.

Q. Did anything special occur in connection with him?—A. He wanted to borrow some money from me, and I told him he didn't need any money, because the commanding officer had ordered all the men into the garrison, passes to the contrary notwithstanding. Told him he would have to be in by 8 o'clock according to the order.

Q. Speaking of money, reminds me; when did pay day occur with respect to this time?—A. I think pay day was on the 11th, if I am not mistaken.

Q. Do you remember the day of the week?—A. No, sir; I do not.

Q. Well, what else did you do, Sergeant?—A. I returned to the fort and later in the evening I was walking between the guardhouse and the vacant building and I met Sergeant Carlisle and Corporal O'Neil. They had been out in the town of Brownsville rounding up the men, and we had a conversation concerning the reported disturbance of the town.

Q. Do you remember anything about this conversation?

By the judge-advocate:

We shall have to object to hearsay evidence, may it please the court.

By counsel:

We withdraw that question—will lay no stress on it.

Q. What did you do then, Sergeant?—A. I returned to the adjutant's office.

Q. Did you see anyone else that night?—A. I saw Private George Mitchell, the mail orderly, when I returned to the adjutant's office—came up with the mail.

Q. What time did you go to sleep that night, Sergeant?—A. I think it was shortly after call to quarters.

Q. Were you disturbed after that, Sergeant?—A. Yes, sir; I was aroused by a shot.

Q. Tell us what you did when you were aroused by a shot.—A. When I heard the first shot—it was a single shot—I simply raised up to listen; in a few seconds I heard quite a number of shots; then I jumped out of bed and commenced to dress myself as rapidly as possible, and while dressing, call to arms sounded. The shooting continued to increase, and it seemed to be growing nearer to me gradually, and the shooting not only increased, but I heard the yelling, and it seems that the leader of the parties who were shooting had, just before I got through dressing, had reached the gate which leads out to Elizabeth street, in rear of B Company quarters, and I remember distinctly hearing one man yell three times distinctly, "I want all of you; I want all of you," and it seems that this man was shooting a gun which had a heavy, dull sound. I hurried dressing as rapidly as I could; put my belt on and ran to Major Penrose's quarters. Major Penrose was not at his quarters.

Q. Why did you go to Major Penrose's quarters?—A. Because the disturbance in the garrison, and the call to arms had been sounded.

Q. Was that your orders, to report to the commanding officer under such circumstances?—A. I understand that to be my orders; under all unusual circumstances to report to the commanding officer.

Q. Go on.—A. I went to Major Penrose's quarters, and did not find the major there, and went to the guardhouse. I inquired of the corporal of the guard for the commanding officer; he said he had not seen him.

Q. Who was this corporal of the guard?—A. Corporal Wheeler, of Company D.

Q. Go on.—A. I asked then for the officer of the day and he said he hadn't seen him, and then I left the guardhouse and went up to——

Q. Before you leave the guardhouse. Did you see any other noncommissioned officer of the guard at that time?—A. Sergeant Reid, the sergeant of the guard, was there also. I asked him also for the commanding officer and the officer of the day and he hadn't seen either.

Q. Did you see any members of the guard?—A. I saw several members of the guard lying prone in front of the guardhouse, in line of skirmishers.

Q. Was shooting going on at this time?—A. Yes, sir; the shooting was still going on.

Q. Did you see anyone else near the guardhouse at this time?—A. I saw a private of B Company; he was standing under the porch near the post exchange; under the porch of the post exchange, and he approached me and spoke to me and asked me what was the disturbance.

Q. Do you know who that was?—A. I knew his face at that time; learned afterwards his name; it was Private Harden.

Q. Where did you go then Sergeant?—A. I went up the parade ground, and near the middle of the parade ground, about opposite C

Company, I met Lieutenant Grier and asked him for the commanding officer.

Q. Do you know anything about the movements of Sergeant Reid about the time you were at the guardhouse? If so, tell the court.—A. Sergeant Reid and myself went together up the parade ground when I was in search of the commanding officer.

Q. Do you know where he went?—A. I don't know. When I saw Lieutenant Grier I left him and asked Lieutenant Grier which way was the commanding officer.

Q. You found Major Penrose?—A. Yes, sir.

Q. Where was he at that time?—A. He was about opposite the interval of the barracks occupied by Companies C and B.

Q. What did you do when you reported to the major?—A. I reported to the major and said that I have no arms, I would like to go into some of the barracks and secure a revolver. The major said to me all right.

Q. And what next?—A. I went into C Company barracks and asked for the quartermaster-sergeant; he couldn't be found and Sergeant Brawner, who was in charge of quarters, told one of the men to give me a rifle and some ammunition.

Q. Where were you and where was Sergeant Brawner at this time?—A. Sergeant Brawner was at the head of the steps and I was standing on the steps about midway.

Q. That is the steps?—A. Leading from the downstairs squad room up to the upstairs squad room.

Q. What did you do then?—A. When I got the ammunition and gun I returned at once and reported to the commanding officer, Major Penrose.

Q. And where was he?—A. He was around at the wall near the gate that leads into Elizabeth street.

Q. Where was C Company?—A. C Company had gone around to the wall. All of the companies had gone around to the wall when I came out.

Q. Where was Major Penrose, as near as you can recall, when you reported to him?—A. When I reported after securing the rifle?

Q. Yes.—A. He was around at the wall near the gate which leads out into Elizabeth street.

Q. Go back to this man Private Harden. What occurred in connection with him that fixes the fact in your mind?—A. He approached me and said something about the disturbance and said he wanted to go down there and I told him, "No, you stay here."

Q. How was he dressed, do you recall, Sergeant?—A. I think he was dressed in pajamas. I think he had on his hospital clothes. He was sick, a patient in the hospital at the time.

Q. What occurred when you reported to Major Penrose there at the gate?—A. The major was standing in rear of the command, and I heard him give the order not to fire a shot until I give the command.

Q. Did he give you any order at this time or about this time?—A. In a few minutes he gave me the order to go and find Captain Macklin and tell him to report to him at once.

Q. Did you find Captain Macklin?—A. I did not, sir.

Q. What did you do then?—A. I returned and reported to the commanding officer I couldn't find him.

Q. Was the commanding officer still at this place near the gate?—A. He had moved down toward—probably 50 yards down below—toward the end of the skirmish line.

Q. Which way, Sergeant?—A. Toward C Company barracks.

Q. Did you hear Major Penrose give any other orders during this time?—A. Not just at that time.

Q. You saw those men on the line, did you, by the wall?—A. Yes, sir.

Q. Did they remain there all the time?—A. D Company was detached and sent to make a patrol through the town.

Q. Were you close enough to hear the orders given to the company commander or not?—A. I did not hear all the order. I simply understood him to say to Captain Lyon, "Take your company and go down through the town and see what you can find out."

Q. Were you there when this company returned?—A. I was, sir.

Q. Who was with it?—A. The mayor and his brother.

Q. Did you hear any conversation between the mayor and Major Penrose?—A. I did not, sir.

Q. Did you see them together?—A. Yes, sir; the mayor called the major off aside and spoke to him privately.

Q. Did you hear any conversation at this time on the part of his brother?—A. I did, sir.

Q. What was that?—A. I heard him say that "I jumped this bunch because I thought it was a band of Mexicans making a raid through the town." I heard him also say that he and his brother had just been speaking to a mob of 300 and persuaded them to disperse and go home.

Q. Is that all you heard him say at that time?—A. That's all I can recall.

Q. Did you hear Major Penrose give any orders to the command shortly after Mayor Combe came out with D Company?—A. Yes, sir; I heard him give the order to the command for the rolls to be called in all the companies.

Q. Were these rolls called, as far as you know?—A. Yes, sir.

Q. How long did you remain there after this, Sergeant?—A. I remained with the major until I was dismissed.

Q. About when was that?—A. I should judge it to be about two hours or two hours and a half.

Q. What did you do when you were dismissed?—A. I went to C Company's barracks and went to sleep. I didn't return to the administration building.

Q. Did you turn in your arms and ammunition?—A. Yes, sir; I turned my arms and ammunition in that same night, and I turned the rifle and the rifle ammunition in and got a six-shooter and some six-shooter ammunition.

Q. Who did you get that from?—A. The quartermaster-sergeant of Company C.

Q. What shape was this rifle ammunition in when it was issued to you and when it was returned?—A. It was in a bandoleer, closed up.

Q. And did you return it in the same shape?—A. In the same condition. I did not load the piece that was given to me; I had no occasion to use it, and did not open any of the pockets.

Q. Sergeant, I want you to tell the court the impression of this firing as it struck you at the time; where you located it and what you can

recall about it.—A. The first shot struck me as if it were out in the town—somewhere out on that street that separates the town from the post; probably down lower than C Company's barracks. I can tell——

Q. You said it came——A. From that direction. I could not tell exactly whether it was a revolver shot or whether it was a rifle shot, because the shot aroused me, and I was not able to judge.

Q. How was the shooting after that, as it occurred to you?—A. The shooting increased gradually until call to arms was sounded, and it seemed to increase. There seemed to be more shooting after call to arms was sounded than before, and it seemed to be growing nearer and nearer to me—coming right up toward the administration building—getting nearer to me every second.

Q. Did you hear any shots that you could distinguish, except those three that you said were louder than the others?—A. Yes, sir; I heard quite a number of shots different from the shot that I distinguished.

Q. Can you distinguish rifle shots from high-power rifles?—A. I can tell a rifle shot.

Q. That is, from our guns, like the Krag and the new Springfield?—A. I don't know that I would have been able to distinguish the Krag from the new Springfield very well.

Q. I asked if you could tell that from a .45 pistol, for instance.—A. Oh, yes, sir; if it were near to me.

Q. I did not ask you to distinguish between high-power rifles. Well, this continued to come down in your general direction, you mean to say?—A. Yes, sir; the shooting seemed to grow nearer and nearer to me.

Q. How long did this rifle shooting keep up, as near as you recall it?—A. This rifle shooting near the post?

Q. Yes. With respect to your movements, how long did it keep up—the rifle shooting you heard?—A. The shooting was going on when I reported to the major.

Q. Had been going on all the time?—A. Yes, sir; the shooting had ceased near the post and was going on downtown—seemed to be heavy volleys—firing down in town when I reported to the major.

Q. Do you remember whether you heard more than one call to arms sounded?—A. The only call that I remember is the call that was sounded from the guardhouse. It might have been repeated by the trumpeter over there, but I did not hear any other musician sounding the call but the one who was near the guardhouse—the one who was on guard.

Q. You said you were first sergeant of C Company for some years?—A. Yes, sir.

Q. You knew Private Newton during that time?—A. Yes, sir.

Q. Had he been in the company for some time; if so, how long?—A. I could not tell exactly how long. I went on furlough in November, 1905, and I returned in January, 1906, and I found him with the company in January, 1906, when I returned.

Q. Hadn't he served in the company before?—A. Not before that time.

Q. Did you hear of his being struck with a revolver while you were there?—A. In Fort Brown?

Q. Yes.—A. Yes, sir.

Q. When did you hear of this, Sergeant; from whom?—A. I heard it from some of the men of Company C.

Q. What did you hear of it?—A. I simply heard that he was knocked down with a revolver in the streets by some citizen of Brownsville, Tex.

Q. Did you ever know who did that?—A. I learned some time afterwards that the man's name was Mr. Tate.

Q. Have you any distinct recollection as to the date of this occurence?—A. I have not. I think it was somewhere between the 5th and 7th of August.

Q. What impression did this make on your mind, Sergeant—this hitting of Newton—at the time it was reported to you?—A. It didn't make any impression on my mind at all.

Q. Why not?—A. Because I knew this man Newton was a man given to drinking and when in liquor was a nuisance and was very liable to do things that would fret other people, and it had been a common thing for him to get drunk and get beat up.

Q. Had you known of his being beat up before?—A. I had; yes, sir.

Q. Where?—A. Fort Niobrara, Nebr.

Q. So as far as Newton getting beat up, you didn't think it was anything out of the ordinary?—A. No, sir; didn't strike my mind as anything out of the ordinary at all.

Q. Did you note yourself, when you were associating with the men, any unusual discussions or any feeling of resentment about it?—A. I did not, sir.

Q. You noted nothing in connection with that that you thought you should report to the commanding officer?—A. I did not, sir.

Q. Did you know anything about any correspondence in connection with that?—A. Yes, sir.

Q. Tell the court what you know about that.—A. I know the commanding officer wrote a letter to Mr. Vann, I think that is his name, inspector of customs, requesting that an investigation be made.

By the judge-advocate:

Does he know that of his own official knowledge? Otherwise we shall have to object.

By counsel:

We are going to fix that. If you will leave him alone, Captain Hay, he will bring that out.

Q. How do you know the commanding officer wrote this letter?—A. Because I wrote the letter on the typewriter myself; a draft was handed to me in the office.

Q. Do you know who signed this letter of your own knowledge?—A. Yes, sir.

Q. Who?—A. The commanding officer signed it.

Q. Major Penrose?—A. Yes, sir; Major Penrose.

Q. Do you recall the date of that Sergeant?—A. I do not, sir.

Q. The correspondence of the adjutant's office went through you, did it not, Sergeant?—A. Yes, sir.

Q. At the time of this occurrence the night of the 13th and 14th of August, had any reply been received from Mr. Vann to this, that you know of?—A. No, sir.

Q. Do you know whether any reply was ever received?—A. I do not, sir.

Q. Now, Sergeant, did you know a man by the name of Adair in C Company?—A. I do, sir.

Q. Was anything brought to your attention in regard to Adair, in connection with trouble he had had down town?—A. Private Adair told me that he went over in Mexico and purchased a gold pen and that returning to Brownsville the inspector came out at the ferry and took the pen from him and asked him his name and his company and said he was going to report the fact to his company commander. Private Adair told me also that he was going to report the fact to his company commander himself.

Q. That's all you know of that?—A. That's all.

Q. You heard no discussion in the company among the men at all?—A. None at all. Private Adair is the only man that spoke to me about it.

Q. Did you know a man by the name of Reid?—A. Yes, sir.

Q. Did you hear about any trouble that he had had?—A. I heard he was knocked in the Rio Grande River off the ferry. In fact I saw him when he came in wet.

Q. Did he tell you this story?—A. No, sir.

Q. Who did tell you?—A. Private Madison, of Company C. That is the only man I remember talking to of it. He was with Private Reid when he was knocked off the ferry.

Q. What were the circumstances of that, Sergeant? What did Madison tell you?

By the assistant judge-advocate:

We object to that as hearsay.

By counsel:

We think this is pertinent. The judge-advocate has laid the greatest sort of stress on this, and we have got to know first whether this came to this witness's attention, and then follow it up, as I have, with other instances as to what effect this produced on the minds of the members of the company. The fact is that that is positively alleged in these charges. During the prosecution this has been dwelt on with practically every witness that ever heard it, and the only way we can show what the actual feeling among the men was is by the men and by the men that heard it, and show the sources from which they heard it, and what the story was as they understood it. We think it clearly pertinent.

By the assistant judge-advocate:

The only reason I object here as to what Corporal Madison said is that Corporal Madison is one of the men summoned as a witness, and his testimony is better than what this present witness may have to say on the subject. Corporal Madison can tell us about it when he comes.

By the counsel:

I think the distinguished assistant judge-advocate will recall that it is very doubtful if Corporal Madison will ever be here, in spite of the summons. We have no evidence, and we ask the privilege of introducing the next best evidence we have, and we maintain this is the best evidence at hand. It is the only way you can show, and, in fact, it will show that Corporal Madison was actually with this man, and the court will recall that this was brought out on the prosecution—that is to say, that Corporal Madison had directly reported it to the commanding officer, and it was thrashed over from that point.

By the assistant judge-advocate:

I would like to state that Sergeant Taliaferro is a witness in the case that is to succeed this one—the case of Captain Macklin, and any points that may be omitted from his present direct examination he can be recalled later, inasmuch as he is going to be here all the time, and any testimony as to what he heard Corporal Madison say is not at this

time, or until we find out whether Corporal Madison can come or not, the best evidence. If Corporal Madison can not come, then there will be no objection to the next best evidence being introduced as to what Corporal Madison said at that time.

By the counsel:

Both the counsel and the judge-advocate in the Macklin case are here and, until the counsel objects to this in behalf of Captain Macklin, we don't think it especially pertinent that it be objected to by the judge-advocate.

The accused, his counsels, the witness, the reporter, and the judge-advocates then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce that the objection is sustained and the question will not be answered.

Q. Did you hear this matter discussed around among the men?—A. The matter of striking Reid?

Q. Yes.—A. I don't recall any discussion only with Corporal Madison.

Q. Is he the only person you talked to about it?—A. Yes, sir.

Q. Did Corporal Madison express any resentment?—A. No, sir; Corporal Madison——

By the judge-advocate:

I object to that as being purely a leading question. It is using almost word for word a certain allegation in the specification in addition, and I object to that.

By associate counsel:

In reply to the objection of the judge-advocate I will say that I am not attempting to establish any fact in evidence from the hearsay testimony of Corporal Madison, and it is immaterial whether his statement is a truthful one or not; simply to express the state of feeling among the men of the command, and it is from those men, and from them alone, that we can establish the truth or falsity of that specification. I don't see how you could have more competent testimony. The question is not leading, does not suggest any answer as to whether or not Corporal Madison expressed any resentment in any conversation he had with the witness about this incident.

The accused, his counsels, the witness, the reporter, and the judge-advocates then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce that the objection is not sustained and the question will be answered.

(The question was then repeated: Did Corporal Madison express any resentment?)

A. He did not. Corporal Madison said——

By assistant judge-advocate:

That has been objected to and the court has sustained it, as to what Corporal Madison said.

By the counsel:

Now, may it please the court, I take advantage of this to read to the court the allegation in the specification. We take it for granted that you know it, but to make sure it is in the record we purpose reading it. In the second specification of the charges: "In that Maj. Charles W. Penrose, Twenty-fifth Infantry, being aware of the feeling of resentment in his command toward the citizens of Brownsville, as a result of the assaults upon certain individuals of the command —," etc. That's the only part that is pertinent. Now, we have a right to know what came to this witness in regard to that assault and to every other assault. It makes not one particle of difference whether what came to him was true or not true—the point is, what was the report that came to this witness, from what source did it come, and what was the effect produced on

this witness and others of the command with whom he talked? To our mind it is absolutely—and we challenge anyone to produce in any other way—the only means we have or that exist of showing what the feeling in this command was in regard to this particular assault, and it is the only means of knowing whether or not this was brought to the attention of this accused. You can't show the feeling of a command in any other way, as I state, and we have shown now that this did come to this man from a member of that command who was at that ferry and saw the entire incident and told him the facts. It makes not a particle of difference whether these facts are true or not, but did he tell you these facts and what was the effect of them? And it is not worth while for me to remind the court that that all was thrashed over and the prosecution had to establish it, and it is the only way we can rebut it, and we ask that this witness be allowed to go on and answer that question.

By the assistant judge-advocate:

May it please the court, the objection to the last question put, namely: "Did Corporal Madison express any resentment?" was answered by the witness with the words, "I do not." Then he went on to state, "Corporal Madison said to me——", at which point the prosecution objected, because the fact that the question before the last, as to what Corporal Madison said at the time, upon being objected to by the prosecution, was sustained, and if the witness were to continue in his answer, as he started out to do, it would be plainly contrary to what has just been held by the court, and Corporal Madison is expected as a witness—at least has been subpœnaed as a witness—and until we find out whether he is coming or not, Sergeant Taliaferro's testimony as to what he said at the time is not the best evidence.

The accused, his counsels, the witness, the reporter, and the judge-advocates then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce the court does not regard the question and answer as falling within the rule including hearsay. The court understands that the statements made by members of the command in conversation are the best available evidence to establish the sentiment existing in the command. The court, therefore, does not sustain the objection.

(Question was repeated to witness.)

A. Corporal Madison said that Reid had been drinking and was creating disturbances on the ferry and was in fault.

Q. What were the facts in this case, as they came to you, Sergeant?—A. The facts in the Reid case?

Q. Yes.—A. Well, the facts were that this man got into a dispute concerning the paying of fares and that while disputing with the boatman on the ferry concerning the paying of fares some officer at the ferry came out and, in clearing the ferry, knocked this man off of the ferry in the river.

Q. What do you mean by clearing the ferry?—A. Getting the crowd out of the way so that people could get into the boats; people that were going back and forth.

Q. Did you hear this discussed at all in the barracks or among the men in any way?—A. I did not, sir.

Q. Do you know when this was, Sergeant?—A. I could not give the date. It probably was about—I think it was a Sunday, if I am not mistaken, and it was about the 11th or 12th of August.

Q. You never heard any feeling expressed by them about it at all?—A. I did not, sir.

Q. You knew nothing of any investigation of this or report of it in the adjutant's office?—A. No, sir.

Q. When did you first hear about the man who was supposed to have interfered with the woman on horseback?—A. Between 5 and 6 o'clock in the evening on August 13, while at supper.

Q. That's the first you heard of it?—A. That's the first I heard of it.

Q. Is that all the facts you heard of it—about the incident itself?—A. Yes, sir; that's all I heard; just what was reported to me by Sergeant Harley that evening.

Q. Did any feeling of resentment or discussion of this in any way come to your knowledge after 5 o'clock that evening, or after you heard it, between 5 and 6? Among the men, I mean.—A. Yes, sir; Private Mitchell, of Company B, who was——

Q. I am talking about the Evans incident.—A. This is in connection with the Evans incident.

Q. Go on.—A. Private Mitchell, of Company B, who was the mail orderly, came up with the mail about 8 o'clock and stated to me—I asked him what were the conditions in the town, and he said there was a large crowd around the post-office that tried to engage him in an argument concerning this Evans incident, and he shooed them off as best he could. He said they seemed to want to get him in trouble. He said he didn't know anything about it, and just as he got away one of them told him "Well, its's a good thing your commanding officer ordered you all in by 8 o'clock to-night, because some of you are going to get killed to-night." I told Private Mitchell to report that to the adjutant when he delivered his mail.

Q. Do you know whether he did report that to the adjutant or not?—A. I do not. I have been informed he did not.

Q. Did you report it to the adjutant or the commanding officer?—A. I did not report it to the adjutant or the commanding officer, because it was after dark when the mail orderly was talking to me and he was going to deliver the mail, and I told him to report the fact to the adjutant himself. I intended to make the report the next morning myself.

Q. Well, did you make it the next day or at any time afterwards? If so, when?—A. I made it the next time the matter was brought to my attention, which was during the investigation. I made this statement to Major Blocksom I remember very distinctly, and I don't know whether I made—I don't know exactly when I made the report to the commanding officer, but when I spoke to him concerning it——

Q. Was it before the incidents that occurred that night?—A. When this man reported to me?

Q. Yes.—A. Yes, sir; it was about 8 o'clock.

Q. Did you report it to Major Penrose before the shooting?—A. No, sir; I did not.

Q. Do you remember whether you reported it the next day, or when?—A. The first I remember speaking of it again was when the investigation was brought up by Major Blocksom.

Q. So far as you know, was that the first information that Major Penrose had of that, when you reported it to Major Blocksom?—A. I do not know, sir; I was under the impression that Private Mitchell had reported to the adjutant, as I told him.

Q. But you said you understood afterwards that he did not?—A. Yes, sir; I learned afterwards that he did not make the report.

Q. Do you remember how you learned that? Was it from the adjutant, or whom?—A. The commanding officer told me he did not make the report.

Q. Was that after the report you made to Major Blocksom, or when?—A. I think it was some time afterwards.

CROSS-EXAMINATION.

QUESTIONS BY ASSISTANT JUDGE-ADVOCATE.

Q. By whom were you appointed battalion sergeant-major?—A. I was appointed by Col. R. W. Hoyt, Twenty-fifth Infantry.

Q. Upon the recommendation of whom?—A. Maj. Charles W. Penrose, Twenty-fifth Infantry.

Q. So that Maj. Charles W. Penrose recommended you for this position?—A. Yes, sir.

Q. And to him is due the fact that you are now battalion sergeant-major of the First Battalion?

By associate counsel:

May it please the court, I think this is the proper stage of the proceeding to object to the character of questions being asked by this assistant judge-advocate. He seems to be making use of the witnesses for the purpose of advancing arguments to the court, and I object to the form of questions asked. If he seeks in anyway to establish any evidence by the witness—to break down any evidence testified to in direct examination—it is all right, but I don't think it is proper that he should make use of the witness to make an argument to the court. While that is a technical objection, I think it is more or less material to us, for in that way he has a hearing before the court he is not entitled to.

By assistant judge-advocate:

The fact was brought out in direct examination that the witness is at present sergeant-major of the First Battalion, Twenty-fifth Infantry, and it seems to me it is entirely pertinent to find out by whom he was appointed, and, if he was appointed by the accused, it may show to some extent that he is an interested witness and not entirely unbiased.

By associate counsel:

So far as the assistant judge-advocate has stated his position in his last answer, he is entirely correct. It is most pertinent to establish through this witness how he got his position, but his last question is the one I object to. It is not pertinent to ask the witness if he owes his position as a battalion sergeant-major to Major Penrose. In the first place that is not a correct statement of facts. The witness has just testified that he owes his position to Colonel Hoyt, through the recommendation of Major Penrose, and I don't see any point in going into argument, through the witness, as to whether or not he owes his position to Major Penrose in any other way than he has testified to. I object to it, because the assistant judge-advocate makes use of that form of examination, not only with this witness, but with all he has examined—not that I care about this particular question, but I want to interrupt him in that form of examination.

By assistant judge-advocate.

I don't mind changing the form of that question.

By the associate counsel:

I object to your making use of that form of examination—argumentary.

(By direction of the court the question was read.)

By assistant judge-advocate:

I am willing, may it please the court, to change that question. I merely wish to show by this witness that he owes his position primarily to the fact that he was recommended by his battalion commander and, acting upon that recommendation, his regimental commander appointed him, and to show that his present position is not due primarily to Colonel Hoyt, as he stated, but is due primarily to his battalion commander, the accused.

By associate counsel:

May it please the court, the assistant judge-advocate has already established that from certain questions he has asked the witness, just what the status of the witness is.

If he goes into any more matter in the way of argument, it is equally open to us to indulge in the same kind of examination to rebut that and show that he does not owe his position to Major Penrose, but may owe it to his company commander or some other officer, or it may be shown that some noncommissioned officer has taken steps in that matter. It opens up a number of collaterations I don't think are proper in any examination.

By the president of the court:

If the assistant judge-advocate wishes to change his question, I think he might be allowed the privilege of doing so.

Upon motion of a member the court was closed, the accused, his counsels, the witness, the reporter, and the judge-advocates first withdrawing from the room, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce the decision that the objection is not sustained. The court holds this line of cross-examination admissible to establish an interest. Assistant counsel are instructed to address their remarks, in the nature of argument, to the court and not to each other, in the way of conversation.

(The question was then repeated to witness.)

A. I do not know. The promotion came unsought; I was very much opposed to giving up my position as first sergeant, and expressed the same to my company commander.

Q. Who was your company commander at that time?—A. Captain Macklin.

Q. Do the noncommissioned officers of the Twenty-fifth Infantry, particularly the older noncommissioned officers, have very close association with the privates as a general thing?—A. I should say they do.

Q. Do sergeants of long service and recruits—are they very often very close friends?—A. No; not even old soldiers, as a general thing, make close friends with recruits.

Q. The noncommissioned officers therefore, as a general rule, pick their friends among the privates out of the soldiers of long standing rather than from men of comparatively short service, do they not?—A. Yes, sir.

Q. Did you ever overhear any talk in C Company relative to ill-treatment of men?

By counsel:

We should like to have the time fixed as to that, so as to know to what it relates.

Q. Did you ever overhear any talk in C Company prior to the shooting of August 13 relative to ill-treatment received by any members of the command at the hands of civilians in Brownsville?—A. This striking of Newton is the only incident I heard mentioned.

Q. Did you mess at a separate table there in C Company or with the noncommissioned officers?—A. I don't think they had a separate table at that time, and if they did I was not particular to sit at it. I generally came in late for meals and sat where I could find a convenient place.

Q. Were you present in the adjutant's office when any complaints or reports of ill-treatment were made to Major Penrose prior to the shooting of August 13?—A. I heard none, sir.

Q. Your office is separate—is on the other side of the hall from Major Penrose's office?—A. No, sir; simply a door between us.

Q. Simply a door?—A. Yes, sir; a partition and a door.

Q. When Corporal Madison told you on the evening of August 13 about the orders to the effect that men were to be kept in after 8

o'clock, did he express any opinion on the subject of being kept in?—A. No, sir.

Q. Did you have any further conversation about it other than the mere fact they were to be kept in?—A. I told him he was to come in; he didn't tell me.

Q. What did he say?—A. He says, "I am on pass." I says, "Well, passes are revoked so far as this order is concerned; you have to be in the garrison by 8 o'clock."

Q. What did he say then?—A. Didn't say anything.

The court then took a recess until 2 o'clock p. m., at which hour the members of the court, the judge-advocates, the accused, his counsel, the witness, and the reporter resumed their seats.

The judge-advocate then reminded the witness, Sergt. Maj. SPOTTSWOOD W. TALIAFERRO, that he was still under oath, who testified as follows:

CROSS-EXAMINATION CONTINUED.

QUESTIONS BY ASSISTANT JUDGE-ADVOCATE.

Q. With respect to the Newton affair, when did you first learn the assailant's name was Tate?—A. I can not say; I don't remember the exact time.

Q. Was it before or after August 13?—A. It was before.

Q. Do you know whether it was a week before or two days before, or how long?—A. No, sir; I do not.

Q. Do you know where he lived?—A. No, sir; I do not.

Q. Who told you what his name was; do you remember?—A. No, sir; I do not remember that.

Q. You state that it was a common thing for Newton to get beat up. State exactly, to your knowledge, how many times he has been beaten up.—A. One time that I mentioned as being in Fort Niobrara, Nebr., is very vivid in my mind.

Q. That is the only instance you know of except that one in Brownsville?—A. The only instance that I can fix in my mind.

Q. So, those two are the only instances you have any recollection of at present?—A. To my own personal knowledge, while I know of a number of other instances that were mentioned to me by other men.

Q. Did Major Penrose ever ask you about Newton's character before he sent the letter?—A. I don't remember that he did, sir.

Q. You were first sergeant of C Company for some time?—A. Yes, sir.

Q. Newton was in C Company, wasn't he?—A. Yes, sir.

Q. You have no recollection of his having asked you about what character this man had in the company, whether he was quarrelsome or otherwise?—A. I don't remember any conversation concerning this man's character.

Q. You were in the office, however, at the time that letter was sent?—A. Yes, sir.

Q. And you had been appointed upon recommendation of Major Penrose?—A. Yes, sir.

Q. From first sergeant of Company C—this same company?—A. Yes, sir.

Q. Did Major Penrose request in this letter that Tate be discharged if after investigation it was found that he was in the wrong in the

matter?—A. I don't remember any request as to his discharge; I simply remember he requested an investigation.

Q. You don't remember that Major Penrose requested that this man be put out of the service or discharged in case it was found the assault was made without just cause?—A. No, sir; I do not remember.

Q. Do you know it was not in the letter?—A. I could not say it was not in it.

Q. You wrote the letter yourself?—A. Yes, sir.

Q. You never said anything to the adjutant about Newton's character?—A. No, sir; I wasn't questioned concerning it.

Q. Did you never hear any talk at the supper table or around the barracks with reference to this Newton affair?—A. I heard the matter mentioned at the time it happened.

Q. Did you never hear any member of Company C say in your present [presence] that the colored troops were not given a square deal down there, or words to that effect?—A. No, sir; I do not remember any words to that effect.

Q. Or that the townspeople were bitter against them?—A. I have never heard words to that effect.

Q. You never heard any member of that company say they would get even with them?—A. I have heard nothing of that kind.

Q. Did you never hear the Adair affair, the incident of this pencil being taken from this man, being discussed?—A. Private Adair mentioned that matter to me himself; I never heard anyone else mention it but Private Adair.

Q. With reference to Reid, who was knocked in the water; did you ever hear that discussed?—A. Corporal Madison spoke to me concerning that.

Q. So that from that——A. I never heard it from any other person—any other member of the garrison, or otherwise at all.

Q. Are you married?—A. No, sir.

Q. You lived all the while in Brownsville in the administration building?—A. I lived in the administration building and slept in the administration building until this occurrence of the 13th of August, and after that I slept in C Company barracks. I was in the administration building when the occurrence took place.

Q. How often each day would you visit the barracks—just for your meals?—A. I would visit them for my meals and at night, after the adjutant's office closed, I was frequently down through the barracks.

Q. Who were your particular friends in C Company?—A. Most of the whole company were my friends.

Q. Which were the ones with whom you used to spend your time more than others?—A. Sergeant Carlisle, Corporal O'Neil, and Corporal Madison.

Q. Wasn't Sergeant Harley a good friend of yours?—A. Yes, sir; all the old men were.

Q. Did you have any friends among the recruits?—A. No particular friend among the recruits.

Q. Now, by the way, speaking about these recruits, the description and assignment cards are kept in the adjutant's office of recruits that come?—A. No, sir.

Q. They passed through the adjutant's hands, however, did they not?—A. Yes, sir.

Q. Have you seen many of them since you started in as battalion sergeant-major?—A. Yes, sir; I have seen quite a number of them.

Q. Did you receive many recruits prior to the time you went down to Texas—that is, within six months prior thereto?—A. Not very many.

Q. Where did these come from?—A. Where did most of the recruits come from who were received?

Q. Where did most of them come from?

Counsel for the accused:

We haven't any objection to that evidence being shown, nor have we any special objection to it being asked this witness, but we submit that if the purpose is to show, as we assume it to be, that these people came from any special district or districts the best proof of it is either the D. and A. cards, or the muster rolls, or certified official copies of them. Without attempting to interfere with the examination, we think we have a right to ask what the purpose is, and if the purpose is simply that, then that it be limited to that class of proof.

Assistant judge-advocate:

May it please the court, we withdraw that; the other is doubtless the best evidence, but it was merely a small point, and I thought possibly by testimony of a noncommissioned officer whose position was such that he had occasion to see these cards frequently and probably knew about where the recruits came from. I think it would save a good deal of trouble and time.

Counsel for the accused:

Not only did I state what is unquestionably the law, but surely it could not be expected that a sergeant-major would be expected to remember the contents of D. and A. cards passing through his hands over a period of six months.

The presiding officer:

I understand the question is withdrawn.

Assistant judge-advocate:

Yes, sir.

Q. Leaving aside the question of D. and A. cards, do you know from what recruit depots or recruiting stations most of the men who joined the battalion as recruits came from during the six months prior to your departure from Brownsville?—A. I do not.

Counsel for the accused:

That is the same thing. We objected to that form of introducing that fact—that is all. If he wants it put in we are prepared to admit it, or he can show it by proper evidence.

Q. With reference to this man Mitchell, who reported to you on the evening of August 13 that he had been having an argument with some people downtown, near the post-office, what was his exact language, as nearly as you can recall?—A. He said that there was a crowd around the post-office that said to him, "I see that some of you all have been starting some of your meanness around town," mentioning what was in the paper concerning the Evans assault, and he said that he told them that he didn't know anything about it, and he tried to get away from them, and they told him, "Well, it is good that your commanding officer ordered you all in the garrison by 8 o'clock to-night, because some of you were going to be killed to-night," and he said to them, as near as I can remember now, "I don't think you will do any harm—" I believe he said, "I don't think the killing will be all on one side." I think those are about the words he used, as near as I can remember.

Q. Where is this man Mitchell now?—A. He is a prisoner at Fort Reno.

Q. In the guardhouse?—A. He is dishonorably discharged and sentenced to six months' confinement.

Q. Did you tell Major Penrose about this Mitchell business?—A. Yes, sir; I did.

Q. When?—A. When he held the investigation at Fort Brown.

Q. In August or September?—A. In August.

Q. You are positive of this, that you narrated the incident in practically the same way you have before this court?—A. Yes, sir.

Q. Did you tell Colonel Lovering anything about it?—A. No, sir; I didn't tell Colonel Lovering anything but what he asked me. He swore me in and said, "Confine yourself to just what questions I ask you, and nothing else." That is what he said.

Q. Did you ever have any occasion to visit any saloons in Brownsville?—A. I did, sir.

Q. Tell the court your experience in visiting the first saloon that you went to, kept by a white man.—A. I simply went in——

Counsel for the accused:

We are not going to interpose any objection, but will just call attention to the fact that it was not gone into in direct examination.

Assistant judge-advocate:

I withdraw that question. (After a lapse of a moment.) On reconsideration, I will repeat that question.

Q. Did you ever have occasion to visit any saloon in Brownsville kept by a white man?—A. I did, sir.

Q. Narrate your experience.

Counsel for the accused:

I think we will have to put in a formal objection to that, and ask the court to rule on it; it is not proper examination.

Assistant judge-advocate:

I will withdraw that question.

Q. Upon what date did you receive your warrant as battalion sergeant-major?—A. I think it was May 9, 1906. I was appointed May 9, 1906; I don't know, sir, exactly, the date I received the warrant in my hand.

Q. You were at this time at Fort Niobrara?—A. Yes, sir.

Q. Were you placed on duty in the adjutant's office?—A. Yes, sir.

Q. Had you been on duty in the adjutant's office previous to that?—A. No, sir.

Q. Were you present in the office when Colonel Hoyt sent a letter to the War Department?

Counsel for the accused:

That is also objectionable; it is not proper cross-examination, in that it wasn't gone into under direct examination.

Assistant judge-advocate:

May it please the court, inasmuch as this fact has already been brought out by another witness and other testimony on this point may be merely cumulative, I will withdraw that question also.

Q. Did you ever hear of any trouble that the Twenty-fifth Infantry had at the Fort Riley maneuvers?

Counsel for the accused:

I object to that question. It is entirely irrelevant and not proper cross-examination.

Assistant judge-advocate:

May it please the court, this line of questioning, though it is not possibly entirely confined to matters brought out on direct examination, still it is upon matters pertinent to the issue as to whether there was any feeling of resentment entertained by the men of the command down there, and it seems to me that whatever is brought out by this or any other witness which tends to show that their treatment in Brownsville was decidedly different from that they had experienced before, or that they were kept away from the maneuvers for any particular reason, seems to me is pertinent and relevant.

Counsel for the accused:

May it please the court, I wish to remind you that this witness has been here for a month and a week or two as a witness for the prosecution. If this is a fact, and the prosecution was anxious to bring it out, there 's no time in the last four or five weeks but that it could have been brought out, and we object for the reason stated.

The presiding officer:

Do I understand the question was withdrawn?

The judge-advocate:

It was not, sir.

The accused, his counsel, the judge-advocates, the witness, and the reporter then withdrew, and the court was closed, and, upon being opened, the presiding officer announced as follows:

I am instructed by the court to announce the decision that the objection is sustained.

Q. Do you know what time it was when you were awakened on the night of August 13?—A. I could not give the exact time. The first time my attention was called to the time of night was after the shooting had ceased, when the major took out his watch, and I think he said it was then 12.10, if I am not mistaken.

Q. You are not absolutely certain as to the hour he announced?—A. I am not. It is my impression he said it was 12.10; that was a short while after the firing had ceased.

Q. Were you more or less confused when you woke up, or not?—A. I was excited.

Q. You state this first shot was followed after a few seconds' interval by another one?—A. By quite a number.

Q. Were they fired as a volley, or were they fired as if by a lot of people who hadn't had any training in rifle firing?—A. It was scattering fire.

Q. So the first firing you heard after this first shot that awakened you was a scattering fire?—A. Yes, sir.

Q. Did that cease for any time after that?—A. It seemed to continue for several minutes, or quite a number of minutes—probably five minutes or more—this ragged fire near the barracks, and then it seemed to go down into the heart of town, and the volleys that I heard were down in the heart of town—seemed to be a considerable distance downtown.

Q. Were there any cessations of firing at all from the time the bunch of shots were fired until the cessation of the firing?—A. Not to my knowledge; only the pause after the first shot, and then the shooting was more or less continued until the final ceasing.

Q. Was this continuous shooting mainly made apparently by high-power rifles?—A. The most of the shots could have been high-power rifle.

Q. There were individual shots that you thought were not?—A. There were mixed in individual shots that I am quite certain were not high-power rifles.

Q. But in general the shooting from the time the main shooting began until the shooting was all over was that of high-power rifles, was it not?—A. Most of the shooting did sound like that.

Q. You stated that the firing at first seemed to come from some distance from the post and then gradually came nearer.—A. Yes, sir; it seemed to be drawing nearer to me.

Q. As a matter of fact, where were you when you heard this first volley?—A. When I heard the first shot?

Q. When you heard the first shot you were where?—A. I was in the administration building, in my room, in bed.

Q. And when you heard the first volley where were you?—A. As I have stated, I did not hear any volleys until the shooting had ceased near the post. The volleys I heard all seemed to be some distance downtown.

Q. This first bunch of shots, where were you when you heard them?—A. I was still in my room dressing. I got out of the bed at the first number of shots. The first shot I raised on my arm to listen, and then when I heard quite a number of shots I got out of bed and started to dress.

Q. And it was at this time when the shooting seemed to be way away from the post?—A. It seemed to be some distance toward town.

Q. And after you got out of the quarters the firing seemed nearer?—A. Yes, sir; it seemed to be right in rear of B Company barracks when I got through dressing and ready to leave.

Q. The firing after you came out in the open appeared to be in rear of B Company barracks, up that alley?—A. No; it seemed to be right at the gate, most of it—right in the rear of the barracks, at the gate.

Q. In case the first shots—the first bunch of shots—was fired in rear of B or D Company barracks, for instance, isn't it a fact that the barracks themselves would have prevented the sound from reaching you as clearly as though there had been no barracks there? Were they not between you?—A. Yes, sir; the barracks were between me and the shooting all the time.

Q. So that to some extent they probably shut off the sound?—A. No, sir; I don't think they did, because I was in the same room all the while, and the shooting continued to draw nearer to me. If the barracks had shut off the sound my impression would not have been changed until I left the barracks, but this shooting gradually came up nearer to me, and it reached in rear of B Company quarters before I left the room.

Q. How long did it take you to dress?—A. I don't think it took me more than two or three minutes.

Q. Did you put on all your clothes?—A. I didn't put on my leggings.

Q. Did you dress as you otherwise ordinarily would?—A. No; I dressed rapidly.

Q. When you ran out, the shots sounded nearer than when you

were inside?—A. They sounded to me like they were in the rear of B Company barracks when I got outside.

Q. When you were dressing and in the house?—A. It seemed right in rear of B Company barracks when I come out. The shooting had gotten up until it impressed me as being in rear of B or D Company barracks.

Q. You mean the shooting started in rear of B Company barracks and then worked down the road toward the river?—A. The shooting apparently started farther down.

Q. Down where?—A. Down that street that separates Fort Brown from Brownsville. It seemed to me that the shooting was out in the street and somewhere down nearly opposite that vacant set of barracks, and it gradually came up until it reached in rear of B Company barracks, and the shooting had gotten up that high before I left my room, according to the sound to my ear.

Q. You were in the house at that time?—A. Yes, sir.

Q. Could you tell when you were in the house the exact location of shots fired anywhere from a hundred to 300 or 400 yards away?—A. I have an idea.

Q. Do you mean to tell the court that you, lying in bed or dressing yourself in a room in a building at a distance of from 100 to 300 yards or more from where firing is, that you can tell exactly opposite what particular house the first shot sounded?—A. I can tell what my impression of it was.

Q. Was that impression formed at the time or formed later, after you found out about the shooting?—A. Formed at the time.

Q. And you state that this first shot that had a dull sound was fired where?—A. The first shots that I heard that had a dull sound were up near the gate that leads out into Elizabeth street.

Q. How many shots did you hear that had a dull sound?—A. I heard quite a number of them.

Q. You heard some up Elizabeth street?—A. They seemed to be right at the gate that leads out into Elizabeth street.

Q. When was it you heard this voice calling out, "I want all of you?"—A. That was when I heard those dull shots. I would hear this man yell, then I would hear the shots.

Q. Where were you at the time?—A. In my room.

Q. This man was standing, apparently, where?—A. Out about the gate that leads into Elizabeth street.

Q. Could you hear that man, too?—A. According to the sound, that is where I located him.

Q. How long was this after the first shot?—A. That might have been probably two minutes, hardly much more than that.

Q. About two minutes after the first shot that a man stood by the garrison gate and called out, "I want all of you" three times?—A. I suppose it wasn't more than two or three minutes; I was about ready to leave.

Q. Will you swear it wasn't more than three minutes?—A. I would swear as to the number of minutes; I hadn't left the building when I heard it, and I left it as soon as I got dressed.

Q. You were still in the building, however, when this voice called out?—A. Yes, sir.

Q. If you could hear it in the administration building, couldn't anyone sleeping on the back porches of B or D Company barracks

and was also awakened by the first shots—ought he not have heard it?—A. He should have heard it.

Q. What is the distance from your room to the garrison gate?—A. I should put it not quite 200 yards.

Q. And you heard this voice plainly and distinctly call out three times, "I want all of you," at a distance of 200 yards?—A. Yes, sir; about 200 yards; it might be less.

Q. The windows in the barracks were open at that season of the year?—A. Most of them; yes, sir.

Q. Are not the windows in the barracks in which the men sleep habitually kept open in summer in Brownsville?—A. Yes, sir.

Q. Were your windows open?—A. Yes, sir.

Q. How far is it from the garrison gate to B and D Companies' gate, approximately?—A. Oh, about——

Q. I believe we have that accurately—never mind.—A. About 30 yards.

Q. And you were 200 yards away?—A. Yes, sir.

Q. You were in a room and the men in the barracks, most of them asleep inside the barracks, were they?—A. Yes, sir.

Q. Men awakened by the first shooting in either B or D Company should have heard that voice?—A. Men awakened by the first shooting should have heard that voice.

Q. And C Company barracks wasn't any farther from the barrack's gate than the administration building, was it?—A. I don't think it was.

Q. So that men in C Company should have also heard that voice?—A. I don't know what should have prevented them from hearing it if they were awake at the time.

Q. Do you know of any other man in that entire command that heard that voice?—A. I do.

Q. What is his name?—A. Private Dorsie Willis, Company D, Twenty-fifth Infantry.

Q. When did he tell you about this?—A. Well, we were at, if I recall—he was orderly for the commanding officer one day, and we were speaking of this disturbance, and I told him it was strange I hadn't met any man who had heard that voice, and he told me, "I heard it."

Q. That is the first instance you heard of anyone else having heard it?—A. I didn't discuss the matter with other men.

Q. Did you ever report this to Major Blocksom?—A. About hearing this voice?

Q. Yes.—A. I don't remember reporting the words that this man used, but I reported to him that I heard the yelling, and I reported to him that I heard a man shooting a gun that was not an army rifle, and that I heard the yelling distinctly.

Q. Why didn't you tell him you heard this voice call out those words?—A. Because he didn't question me along that line; he simply was trying to find out as to who the soldiers were who had done the shooting and to get some information to lead to the plot that the soldiers had formed to shoot up the town—to get some information that would lead to the finding out that the soldiers had formed a plot to shoot up the town, and he made no——

Q. Didn't Major Blocksom tell you to speak freely and tell all you knew about the affair? Did he limit you?—A. He didn't limit me,

but I don't remember him asking me about anything that bore on this line, as to whether the shooting had been done by soldiers or others.

Q. Did he not tell you to state anything he had not covered in his questions?—A. No, sir; I don't remember that he did; the only thing I can remember he asked me was, "Don't you think the soldiers were really incensed at Newton's treatment, and really formed a plot to shoot up the town on account of the treatment of that man Newton?" Most of the questions were along the line of finding out what soldiers had been implicated in the shooting, and as to whether it was soldiers or other parties that did the shooting he did not ask.

Q. So he didn't give you an opportunity to state all you knew about this affair?—A. He gave me no occasion to state that.

Q. Did he give you any opportunity to state it?—A. He gave me no occasion to volunteer any such information, but seemed to know that the shooting had been done by soldiers, and I don't know——

Q. Never mind; the question is answered. You stated in your direct examination, I believe, that the man that fired that first shot was the man that made this call, and repeated it twice?—A. No, sir; I didn't make that statement.

Counsel for the accused:

I beg your pardon, he didn't state that.

Assistant judge-advocate:

The record is not here, and I am trying to quote it without any intention to confuse the witness.

Q. The first shot was fired, then, to the east of the company barracks, along that road, to the best of your judgment—the first shot, that dull, heavy sound?—A. That dull shot struck me as if it was in that street that separates Fort Brown from the town near the gate. The man didn't seem to be very far from the gate that leads out into Elizabeth street; I would have placed him over near that gate.

Counsel for the accused:

Were you asking about the very first shot?

Assistant judge-advocate:

Yes, sir.

Counsel for the accused:

He has never located that.

A. I am speaking of the dull shot, the shot that I associate with the call that was made—the call that "I want all of you."

Q. You think the man that fired that shot and the man that made that call was one and the same man?—A. Yes, sir; I feel quite certain that the man that made that call made the shot, because the shooting and the calling came from the same direction.

Q. You were in the house at that time?—A. Yes, sir; in the administration building, but my window wasn't down.

Q. You were just about leaving the building at that time?—A. Yes, sir.

Q. And how far is your door to your room from this window in your room that was open?—A. I should judge it to be about 15 or 16 feet.

Q. And were you about going out that door when you heard this?—A. I heard that before I started to the door.

Q. How far is your bed from the window?—A. My bed was right at the window.

Q. And you dressed right there on the edge of your bed?—A. Yes, sir.

Q. And you heard this shot just about the time——A. About the time I was getting ready to leave.

Q. You don't know whether it was when you were sitting on the bed or walking toward the door?—A. I was standing on the floor, dressing.

Q. You are positive as to the exact words?—A. I am positive; I will never forget them.

Q. Did you hear any other words?—A. Those are the only words I could distinguish.

Q. Did you hear any men call out about black son-of-a-bitches?—A. I did not hear that.

Q. Did you light a light in your room to dress by?—A. I did not, sir.

Q. When did the bugle sound?—A. The bugle sounded soon after the first shooting commenced; I should place it probably thirty seconds, I should think.

Q. After the first shot?—A. After the first shooting started.

Q. So thirty seconds after this first shot that you heard the bugle started?—A. It seemed to me about that.

Q. Did you hear any more than that one bugle?—A. I don't remember hearing but one bugler.

Q. Where did that come from, apparently?—A. From the direction of the guardhouse.

Q. How many times did he sound call to arms, or if that was the call to arms he sounded?—A. Yes, sir; he sounded call to arms. I am not certain how many times he sounded it.

Q. For about how long a time was the sound of the bugle kept up; while you were crossing the parade?—A. No, sir; it ceased before I left the building.

Q. Before you left the administration building?—A. Yes, sir.

Q. And the bugler didn't sound it any more?—A. I didn't hear him.

Q. Did you hear any other bugler sound it?—A. No, sir.

Q. What did you do when you left the administration building?—A. I went to Major Penrose's quarters.

Q. How did you go?—A. I went in rear of the officers' quarters.

Q. Show the court on the map.—A. (Witness goes to map.) I went right by this end door, and right down here, right in rear of these quarters, and around down here; I think the last quarters are Major Penrose's, on the left (indicating on the map a line from the southern face of the administration building southward just west of quarters 12, fence in rear of officers' quarters to Quarters A).

Q. Did you walk or run during this time?—A. I ran as rapidly as I could.

Q. When you got to Major Penrose's, what did you do?—A. I knocked and called for Major Penrose.

Q. Did anyone respond?—A. No one responded.

Q. No one at all?—A. No one at all.

Q. Then what did you do?—A. I went to the guardhouse.

Q. By the way, how long were you knocking at the door there?—A. Not but a very few seconds; I didn't pause, because I was in a hurry to find the major.

Q. Then ran to the quarters?—A. Yes, sir.

Q. You saw Corporal Wheeler and Sergeant Reid there?—A. Yes, sir; besides several of the guards.

Q. At what point during your run from the administration building to the guardhouse did the bugle cease?—A. It ceased before I left the administration building.

Q. And from that time you didn't hear it any more?—A. I didn't hear the call any more.

Q. Are you a light or heavy sleeper?—A. I am a light sleeper; I wake very readily.

Q. So you are certain in your mind that that first shot you heard fired that night was the first shot fired in the vicinity of the post?—A. I am not certain.

Q. What has been your experience in the past of shots fired within a couple of hundred yards from you, at night? Are they apt to arouse you, or not?—A. They are.

Q. After you left the guardhouse, I believe you stated you met Lieutenant Grier.—A. Yes, sir.

Q. Will you please point out on the map approximately where it was when you met him?—A. (Witness goes to map.) I met Lieutenant Grier just about here, right opposite C Company barracks (indicating a point south of the western half of C Company barracks and about one-third the distance across the parade).

Q. Now, with reference to this voice that you heard call out three times, "I want all of you," was that call made before or after the call to arms was sounded?—A. After the call to arms.

Q. Was it after the call to arms had ceased?—A. Yes, sir; the call to arms had ceased, I think, when I heard that.

The court then took a recess until 3 o'clock p. m., at which hour the members of the court, the judge-advocates, the accused, his counsel, the witness, and the reporter resumed their seats.

Q. (The reporter read the last question.) Did you hear any other sound at this time besides this voice?—A. I heard the scavenger's cart running around the building.

Q. From which direction did it come?—A. It seemed to be coming from the rear of B Company barracks; seemed to be running toward the Rio Grande River to get out of the way.

Q. In front or in rear of D Company?—A. I could not tell.

Q. Could you see the cart?—A. I could not see the cart, and could only hear the cart, and didn't know it was the cart until the next morning, when I found out that it was the scavenger. I heard the next morning, after I inquired, that it was the scavenger.

Q. From your best judgment at the time, or, rather, what was your impression at the time, that the cart was in front or in rear of D Company?—A. My impression at the time was that it was a piece of artillery, and I wondered where the town people got a Gatling gun or some other piece of artillery. That is just exactly my impression.

Q. It wasn't until the next day you knew it was the scavenger?—A. Yes, sir.

Q. Did you think the town people were bringing a piece of artillery inside the post?—A. Yes, sir; I thought they were bringing in a Gatling gun. I heard the wagon running, and I thought it was some kind of artillery.

Q. What kind of team did the scavenger drive to this cart?—A. I think he had one mule, I believe.

Q. From the noise made by this cart, was the mule running or walking?—A. He was running.

Q. Did you see him again?—A. I did not see him that night at all.

Q. Where were you when you first heard the cart?—A. I was still in my room.

Q. How long was this before you left your room?—A. Probably a few seconds, or it might have been half a minute.

Q. Before you left your room you heard this cart?—A. Yes, sir.

Q. And it was then in the direction of—— A. It seemed to be running toward the Rio Grande River, down in the rear of D Company barracks.

Q. To the best of your recollection, how many minutes was it after this when you left the administration building?—A. It was right away; just as soon as I could get my clothes on. I dressed as fast as I could.

Q. After you heard this wagon, how many minutes or half minutes was it before you left the administration building?—A. It might have been half a minute more.

Q. About a minute altogether?—A. Hardly a minute.

Q. The animal drawing this cart was apparently going at a gallop when you heard it?—A. Yes, sir.

Q. It was going very rapidly, was it?—A. Yes, sir.

Q. And you heard it, to the best of your recollection, about a minute before you left the administration building?—A. Yes, sir.

Q. Are you sure it could not have been two minutes?—A. No, sir.

Q. Did that wagon come any closer to the administration building than C Company barracks?—A. I don't know.

Q. If you were there for another minute and then left there and went down toward quarters No. 12, you would have heard the scavenger cart if it had come by in that direction?—A. If it had come up toward Major Penrose's quarters—No. 12?

Q. If it had come by the administration building?—A. If it had come toward the administration building while I was there, I would have heard it.

Q. Or over toward the officers' line, would you have heard it?—A. I would hardly have heard it there.

Q. It isn't any farther from the officers' quarters than it is from the administration building?—A. I was moving at a run and the shooting was going on at the same time, and I probably would not have heard the cart. I heard it very distinctly while I was in the room, because I was still paying attention to the sounds I heard.

Q. I thought you were dressing as rapidly as you could?—A. I was dressing, but I was not running or walking.

Q. Can't you locate this cart a little more definitely at the time you first heard it?—A. No more definite, except down there in the rear of B or D Company's barracks; I couldn't tell which.

Q. How is it you can't locate that any more exactly when you can

locate with such precision the voice and the direction in which the shots were fired from?—A. I haven't located that with any more precision than I have the cart. I said the man I heard yelling was somewhere about the gate that leads out on Elizabeth street. I couldn't say exactly the point he was, but he was somewhere near that gate. The cart was somewhere in the rear of B Company barracks. I could not locate either with any more precision.

Q. You said something about a shot coming from some building up the line.—A. I said somewhere near them. I am not definite about that.

Q. That might have come from the rear of C Company barracks—that shot?—A. It might have been up by C Company barracks.

Q. Being in the room, you couldn't tell exactly? It might have been as close as B Company barracks?—A. I don't think it was as close as B Company barracks.

Q. When you were outside you could locate things more accurately than when you were in the house?—A. I think I could.

Q. And you could hear this shooting better?—A. Yes, sir; I think so.

Q. And you might have gotten the impression that the shooting was moving nearer to the post from the fact that there was a greater volume of firing?—A. No. As I stated before, the shooting seemed to be coming toward me when I was still in the room, and it seemed to continue to draw nearer until it got up in rear of B Company barracks; and it got up opposite, in rear of B Company barracks before I left the room.

Q. Is it not true that the firing was gradually increasing in volume during that time?—A. Yes, sir.

Q. So that at first you heard a single shot, which you thought was off at some distance?—A. Yes, sir.

Q. And then you heard some scattered shots which still seemed to be off some distance, and then you heard some more that seemed to be getting nearer, and then just as you left the administration building you heard some firing that seemed to be in rear of B Company barracks?—A. Yes, sir.

Q. And during this time the firing was steadily increasing in volume, was it not?—A. Yes, sir.

Q. There were more shots at the time you left the administration building than there were previous to that time, were there not?—A. Yes, sir.

Q. So that there was a greater volume of sound in the air?—A. Yes, sir.

Q. It was your impression, you stated, that the sounds moved toward you?—A. Yes, sir.

Q. Are you willing to swear that that could not have been an impression formed merely because of the increase in the volume of sound, making it seem to you that the shots were coming nearer?—A. Yes, sir; I will swear at the time that that was not on account of the increase of the volume of sound.

Q. What was the character of this firing?—A. Which firing?

Q. This firing after the first shot, up until the time you left the administration building. Was that apparently rifle fire, or was it revolver fire?—A. It could have been mixed. I heard all kinds of

shots, and some of them could have been rifle shots and some revolver shots.

Q. You stated a while ago that most of those shots were from high-power rifles?—A. Yes, sir; most of them came from high-power rifles.

Q. And there were only isolated single scattered shots of revolvers or shotguns?—A. It sounded like now and then I could hear a heavy, dull report.

Q. Like a pistol?—A. Not like a pistol, but like a gun.

Q. Like a shotgun, do you mean?—A. It didn't sound very much like a shotgun, but more like some gun I am not familiar with.

Q. But practically all of this firing was from high-power rifles?—A. I said most of it sounded like that.

Q. How long have you been in the service?—A. My twelfth year continuous service.

Q. Can't you tell the difference between rifle fire and revolver fire?—A. I can sometimes, but when they are mixed in I can not tell there is a revolver coming in with the others. The shots didn't sound like as if they had all been one kind; I could have told probably it was mixed if they had.

Q. Did the rifle fire predominate?—A. It sounded like more of it.

Q. And there were only, as you stated before, occasional pistol shots?—A. I could not state pistol shots; but there were occasional shots that did not sound like rifle shots in the intervals.

Q. Were you more or less confused at this time and excited?—A. I was greatly excited when I arose.

Q. You were awakened from a sound sleep?—A. Yes, sir; well, I had just gone to sleep; I hadn't been in bed very long.

Q. And you awoke with what impression?—A. I woke up with the impression that the post was being fired upon.

Q. And that naturally increased your excitement?—A. And this man seemed to me calling for the lives of everybody, further increased my excitement.

Q. So that any opinion you formed at that time as to the direction in which the shots were must have been formed at a time when you yourself was under a considerable strain and under excitement?—A. Yes, sir; I was certainly under excitement at the time.

Q. On the way down to the guardhouse you stated that you met Private Harden, or saw him?—A. Yes, sir.

Q. Where was that, exactly?—A. He was on the porch—under the porch of the post exchange.

Q. Where is the post exchange?—A. It is just a little way from the guardhouse.

Q. Which side—south or north?—A. South.

Q. South of the guardhouse?—A. Yes, sir.

Q. Was he on sick report at that time?—A. I think he was; yes, sir.

Q. Did he not work for some officer?—A. I don't know, sir, whether he did or not.

Q. What was he doing at the post exchange at 12 o'clock at night under the porch?—A. He came out from the hospital, I suppose.

Q. How far is the hospital from the post exchange?—A. The hospital is some little distance; I couldn't tell exactly.

Q. Is it 20 yards or 100 yards?—A. It is more like a hundred yards.

Q. Is that your best recollection, that it is about 100 yards?—A. Yes, sir.

Q. Did he tell you what he was doing there?—A. No, sir; he simply asked me what was the trouble going on down there, and he wanted to go down there, and I told him not to go.

Q. How was he dressed?—A. He was dressed in pajamas; hospital clothes.

Q. Did he have any shoes on?—A. I didn't notice.

Q. You asked him, I believe, if he had seen Major Penrose?—A. No, sir; I don't remember asking him anything about that.

Q. When you got to the guardhouse, how many men were there?—A. I remember seeing the sergeant of the guard and the corporal of the guard, and I can say for a certainty, only two privates, and I couldn't tell how many more, because it was dark. The guards were lying prone in line of skirmishers, and I couldn't tell how many there were.

Q. You saw two privates lying prone?—A. Yes, sir; I saw two privates lying prone.

Q. Did you see any more?—A. It was dark, and I couldn't see any more.

Q. How close were you to Private Harden?—A. I got close enough to speak to him.

Q. How close was that?—A. As close as from here to you.

Q. You passed right by him?—A. He came up to me as I was nearing the guardhouse and inquired about this disturbance, and said he wanted to go down there, and I told him not to go.

Q. Now, when you met Lieutenant Grier at the point where you indicated a few moments ago on the map, what did you say to him?—A. I asked him where was Major Penrose.

Q. How close did you get to Lieutenant Grier before you saw him?—A. I was right up on him when I saw him.

Q. Was he running or walking?—A. He had about come to a walk.

Q. In which direction was he going?—A. Going toward C Company.

Q. From which side of the parade?—A. He had just come from the officers' line, I think. It strikes me that he was in front of C Company when I first met him, near about the front of C Company, and I don't recall now whether he was walking or standing still.

Q. You can't state as to that?—A. No, sir.

Q. Did he state that he had seen Major Penrose?—A. Yes, sir; I asked him where was Major Penrose, and he told me where to find him.

Q. Now, had the firing uptown ceased at this time or not?—A. The firing was still going on uptown when I reported to Major Penrose.

Q. And this was after Lieutenant Grier had left Major Penrose?

Counsel for the accused:

One moment. That may be beyond the witness's knowledge.

Q. Then, the shooting uptown continued for how many minutes after Lieutenant Grier told you where you could find Major Penrose?—A. I should think it continued for two or three minutes; probably more.

Q. And Lieutenant Grier at this time was in front of C Company?—A. Yes, sir.

Q. What kind of a night was this?—A. It was dark.

Q. Few stars out, or many?—A. I don't remember noticing the stars at all.

Q. When you reported to Major Penrose, I believe you stated he was about midway between C and D Companies' barracks and slightly out toward the parade?—A. He was on the parade ground, opposite the interval.

Q. Did you hear any noise as if the men were getting out of barracks at this time?—A. The men were getting out of the barracks and were lining up. Some first sergeants were calling the roll and some seemed to be counting fours.

Q. Did you hear the first sergeant of Company B, for instance, calling the roll, or was it C?—A. I don't know now; I wouldn't be positive; I think it was B Company.

Q. At any rate, one of the companies?—A. One of the companies seemed to be calling the roll. I know it wasn't C Company, because I was very near to C Company at the time, but it was some company up the line calling the roll, and I think it was B Company.

Q. You are positive it wasn't C?—A. Yes, sir.

Q. And you think it was B, though it might have been D?—A. Yes, sir.

Q. Did you hear the first sergeant or did you hear a voice calling out the names of these men and hear them reply, "Here," in this company?—A. It was only for a second. I might have heard one answer, probably; I did not stay there a second.

Q. You said you heard the first sergeant calling the roll?—A. I heard him calling something; it sounded like he was calling the roll. I simply went on and reported to Major Penrose, and asked his permission to go in the barracks and get some arms myself. I didn't make any close investigation as to what was going on among the men in the confusion.

Q. Did you hear somebody calling a roll there?—A. It seemed to me like some of the first sergeants was calling a roll.

Q. Which company did you go into?—A. Went into C Company.

Q. Where was the quartermaster-sergeant?—A. I don't know, sir; I couldn't find him.

Q. Who gave you a rifle?—A. Sergeant Brawner, in charge of quarters. He directed the room orderly, I think it was Private Jefferson, of C Company, to give me a rifle and ammunition.

Q. The box of ammunition was already opened when you got there?—A. I didn't see the box; the ammunition was handed me on the staircase.

Q. In what form was this ammunition?—A. In the bandolier, all made up.

Q. Were there any lights in the barracks?—A. There seemed to be a little light.

Q. Where from?—A. It might have been a lantern; I couldn't tell from what source it came.

Q. Did you see any lantern there?—A. I did not see any lantern.

Q. If you saw this light, can't you tell us from where it came?—A. It didn't seem to be enough light to be from a pendant light. That is the reason I suppose it was a lantern.

Q. Was the upstairs in total darkness at that time?—A. I didn't get upstairs; I got halfway up the stairs and then Sergeant Brawner came up to me and I asked him where the quartermaster-sergeant

was—Sergeant McMurray—and he told me he was down at the storeroom, and I went down to the storeroom and the storeroom seemed to be locked, and then I went back and Sergeant Brawner told this man to hand the sergeant-major a rifle and a bandolier of ammunition. I did not go upstairs at all; I only went halfway upstairs; I stopped midway between the top and bottom of the steps.

Q. What was C Company doing at that time?—A. They were out in line.

Q. Were all the men dressed?—A. Some of them didn't have on any top shirts; some had on blouses and some didn't.

Q. Did you meet any other men in the quarters when you went halfway up the stairs?—A. I don't remember seeing anybody but Sergeant Brawner, who was in charge of quarters, and the room orderly, Private Jefferson.

Q. How long was it from the time you heard the first shot, to the best of your recollection, until this sergeant gave you a rifle and ammunition?—A. I should place it at probably—it might be six minutes; not much more than that.

Q. How long after this was it that the firing uptown ceased?—A. The firing uptown ceased while I was getting this rifle and ammunition, because when I came out I remember I heard no more shooting.

Q. What was the nature of the latter part of the firing—was it rifle fire or was it mixed fire?—A. It was at such a distance from me that I couldn't tell much about it; the only thing I could tell about it was that it was in volleys—heavy volleys.

Q. The last firing you heard then?—A. Was heavy volleys.

Q. Were they fired with precision, as soldiers fire them on the range?—A. They seemed to be fired with precision.

Q. That was the last firing you heard?—A. Yes, sir.

Q. You never heard any shots at all after that?—A. No, sir.

Q. So that this shooting began with one shot and gradually increased up to a pretty heavy rifle fire, with occasional pistol shots mixed in it, until in the end nothing but heavy volleys uptown?—A. I couldn't say occasional pistol shots because I don't know but what there might have been other guns than pistols in the shooting.

Q. Now, with reference to the order given by Major Penrose, "Do not shoot until I give the order"—did you hear that order given?—A. I did, sir.

Q. To whom was it given?—A. It was given to the battalion in line of skirmishers.

Q. Did he call it out in loud enough tone to be heard by everybody?—A. Yes, sir.

Q. Were those his exact words, "Do not fire a shot until I give orders?"—A. "Until I give the command."

Q. It wasn't addressed to any officers nearby, but was addressed to the battalion?—A. Yes, sir.

Q. Did you yourself walk along that wall that night?—A. I walked some distance along the wall.

Q. Was it light or dark along the wall?—A. It was light up near the gate where that lamp was at.

Q. As a matter of fact, after you passed to the eastward of the rear of B Company—to the eastward of the oil house and to the rear of B Company—was it not dark down there?—A. Yes, sir; it was dark down there.

Q. But in the immediate vicinity of the gate it was light?—A. Yes, sir.

Q. There were two oil lamps there, I believe?—A. Yes, sir.

Q. What time did the patrol leave? Did you look at your watch then?—A. No, sir; I did not. I couldn't tell exactly what time they left.

Q. How long were they gone?—A. I don't know exactly; I couldn't say as to that.

Q. You were there when they left and when they returned? I refer to the patrol commanded by Captain Lyon of D Company.—A. Yes, sir; I was there when they left and when they returned.

Q. Can you approximate the length of time they were gone?—A. I would place it at less than an hour.

Q. You stated that this patrol was accompanied upon its return by Mayor Combe and his brother?—A. Yes, sir.

Q. Do you refer to his brother, Dr. Joseph Combe?—A. I think that is his name; yes, sir.

Q. How close were you to Dr. Joseph Combe when he made the statement with reference to some Mexicans?—A. I was probably about 10 yards from him.

Q. Where was Major Penrose at this time?—A. I think he was off talking to the mayor at the time.

Q. You think he was off talking to the mayor?—A. Yes, sir.

Q. About how far were the mayor and Major Penrose from you?—A. I don't remember exactly; probably about 15 or 20 yards.

Q. You could see them, however?—A. Yes, sir.

Q. How far were you yourself from this gate?—A. I was standing very near the gate then—not more than 10 or 12 yards from the gate.

Q. So you were 10 or 12 yards from the gate and Major Penrose? What did you say?—A. Probably 15 or 20 yards from me.

Q. And this Dr. Joseph Combe was talking to whom?—A. I don't remember now exactly to whom he was talking. I think Captain Lyon was with him, and I don't know what other officers were near. I thought some of the other officers were there. I am not positive now.

Q. Just give his exact words as you recollect them now.—A. You mean the words of the mayor's brother?

Q. Yes. Tell us all you overheard.—A. I heard him say, "I jumped this bunch, and I thought it was a band of Mexicans making a raid through the town." Then I heard him say that he and his brother, the mayor, had just addressed a mob of about 300 over there and directed them, or requested them, to disperse and go home. As near as I can remember that is the substance of what he said.

Q. To what did he refer when he said, "I jumped this bunch, and I thought it was a band of Mexicans?"—A. He referred to Company D, of the Twenty-fifth Infantry, commanded by Capt. Samuel P. Lyon.

Q. So he didn't have any reference to the people who did the shooting?—A. No, sir; he simply had reference to Captain Lyon and his company. That is who I understood he had reference to. He was standing right by Captain Lyon and D Company at this time, and he said, "I jumped this bunch——"

Q. So you don't want to give the impression to the court that you overheard Doctor Combe state that he "jumped a bunch that he

thought was a band of Mexicans" and that he thought were the people that did the shooting, but that he had reference to Captain Lyon's company?—A. He had reference to Captain Lyon's company when he spoke. He thought that Captain Lyon and his company—Company D, Twenty-fifth Infantry—was making a raid through town. That is the way I got the impression.

Q. And he said he thought "that bunch"—that is, Captain Lyon's company——A. Was a band of Mexicans——

Q. Making——A. A raid through the town.

Q. You are positive that Dr. Joseph Combe said that?—A. Yes, sir.

Q. To Captain Lyon?—A. Yes, sir.

Q. And to who else?—A. I do not remember. I could not name the other officers who were there, but I am quite certain Captain Lyon was there.

Q. Those roll calls you heard over in front of the barracks—you stated, I believe, you only heard one first sergeant calling the roll?—A. I think one was all that I heard calling the roll.

Q. You are not sure whether that was in C Company or B Company?—A. I am quite certain it wasn't in C Company, because I was near enough to know if it had been C Company. I would have been positive; but it was some distance up the line. That is the reason I can't be positive.

Q. How long was C Company there after you went after the gun?—A. They left while I was in getting the gun.

Q. I thought you said when you came out C Company was still there.—A. They left and went along the wall and were in line of skirmishers before I got out. When I got out, they had all gone around to the wall. They left while I was in the barracks, and they were stationed in line of skirmishers around the wall.

Q. Did you, when testifying before Colonel Lovering, state in reply to a question, "What enlisted men did you see before the firing ceased?—A. I saw the man that I have named and one patient in the hospital—I am not certain what his name was—was of Company B, standing on the porch in night clothes. And I saw very nearly the whole of Company C. Sergeant Brawner, Company C. I couldn't name any more names, Colonel. I saw a crowd of men, and there was no roll call made, and I wouldn't like to say I saw this one or the other, because there was no roll call made at the time, and I don't know the names of all the men?"—A. I didn't state that I did not know the names of all the men. I told him I wouldn't like to call the names of the men on account of no roll being called at the time, and there was nothing to fix my mind on any one man. I didn't want to call the names, because I was too familiar with several of their names; because I was liable to call their names from memory.

Q. So you are mistaken if you said you didn't hear any roll call? You did hear a roll call that night?—A. I didn't state in that statement to Colonel Lovering that there was no roll call at all. I stated there was no roll call in C Company.

Q. How was this statement taken down before Colonel Lovering? Was it taken down by a stenographer?—A. Yes, sir; I think so. I wasn't allowed to read it over, and if I had have been I would have corrected that statement, and——

Q. Never mind entering into explanations about it.

Counsel for the accused:

I think the witness has a right to explain any discrepancy that comes up in his evidence without being cut off.

The presiding officer:

Yes; the witness may explain.

A. My reason for not giving the names of Company C was, as I told him, because there was no roll ever called in Company C at that time and I was afraid to say that I saw this one or that one for fear I might mention the name of some one that was not present. It wasn't because I didn't know the names, but was because I was afraid to call the names from memory.

Q. By stating "I saw a crowd of men and there was no roll call made," what do you mean by that?—A. I had reference to C Company, Twenty-fifth Infantry. The first question he asked me was, he asked me what men did you see before the firing ceased. I named several individuals, and then I said I saw most all of C Company; and he said name some of them by name, and then I started on and made this explanation I have just given.

Associate counsel for the accused:

May it please the court, that is his full answer as recorded here in this report.

Q. When did you get the rifle from the quartermaster-sergeant of Company C?—A. After the shooting was over.

Q. You returned the rifle at that time?—A. Yes, sir; after I had been dismissed by the commanding officer I went to C Company barracks and handed back the rifle and the rifle ammunition and was issued a revolver and revolver ammunition.

Q. Now, with reference to this bugle call that you heard, I would like for you to be as definite as you can and state when you first heard it and when it ended. Where were you at these different times?—A. I was in my room dressing when I heard the bugle call, and the bugle ceased before I left my room.

Q. And you didn't hear it any more?—A. No, sir.

Q. Did you at any time ever look for bullet marks on the barracks?—A. I did.

Q. With what result?—A. I didn't find any.

Q. Did you examine the sides of the barracks toward town?—A. I did.

Q. Did you examine that very carefully?—A. I simply passed around there and didn't see any marks of any bullets.

Q. Did you ever hear of anyone finding any bullet marks on the barracks?—A. A private of Company B told me that a bullet broke a window in the barracks and Private Perkins, of Company C, told me that several bullets struck in the shingles over his head where he was sleeping.

Q. Did anyone ever see those bullet holes?—A. I don't know whether they did or not.

Q. Did you ever see that broken window?—A. I did not, sir. The broken window was not called to my attention until after I had left Fort Brown.

Q. Were you in the company at the time Major Penrose examined the barracks?—A. No, sir.

Q. Did you see him examine the barracks at that time?—A. I did not, sir.

Q. Were the sergeant of the guard, Sergeant Reid, and the corporal of the guard, Corporal Wheeler, regularly detailed from the adjutant's office for guard that night?—A. Yes, sir.

Q. You had charge of that roster yourself?—A. Yes, sir.

Q. So that was just in the ordinary course of events that those two men—noncommissioned officers—happened to be on guard that night?—A. Yes, sir.

Q. Did the sergeant of the guard, when you reached the guardhouse, give you any information relative to Major Penrose?—A. He said he hadn't seen him.

Q. Did he say anything as to having received any orders from him or knew where he was?—A. No, sir. I asked him where was the commanding officer, and he said, "I don't know," and I asked him where was the officer of the day and he said, "I don't know."

Q. And the bugle had ceased at this time?—A. Yes, sir; the bugle ceased before I left the administration building.

Q. Did you have any further conversation with the sergeant of the guard?—A. No, sir; no more than, as he started off with one man to go up the parade ground I started along, too, and he looked around and said, "Where are you going?" and I said, "This is the sergeant-major," and he said, "Excuse me, I thought it was one of the guard."

Q. Now, to go back to this conversation between Mayor Combe and Major Penrose near the gate: Were you not close enough to overhear any of it?—A. No, sir; I was not.

Q. You didn't overhear anything that was said?—A. No, sir. I did not try to get close enough to hear, because the mayor indicated to Major Penrose that he wanted to speak to him privately, and I withdrew a respectful distance.

Q. But aside from that you were near the commanding officer most of the time?—A. Yes, sir; with the exception of the time I was sent away to find Captain Macklin and to get the gun.

Q. I believe I asked you as to your appointment as sergeant-major, as to the date?—A. I am not positive as to the date I received my warrant, but I was appointed May 9, 1906.

Q. Battalion sergeant-majors are appointed by regimental commanders after or upon recommendation of battalion commanders, are they not?—A. I think so; yes, sir.

Q. Did you hear any bullets flying over the post while you were traveling about the post that night?—A. I heard no bullets at all, sir.

QUESTIONS BY THE COURT.

Q. Can you state whether you experienced that a race feeling existed in the town of Valentine, Nebr., or not, between the white and colored people? I mean in regard to social matters.—A. The race feeling in the town of Valentine, as regards social matters——

Counsel for the accused:

We have no objection to it, but we want to interpose the statement that we don't see that that has any bearing on this case.

DIRECT EXAMINATION.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Sergeant, how long have you been in the service?—A. Twenty-years, sir, and five months.

How long have you been a quartermaster-sergeant?—A. I have post quartermaster-sergeant twenty-one years, eleven months, enty days.

Sergeant, have you ever served at Fort Brown, near Browns-Tex.?—A. Yes, sir.

When did you serve there?—A. I served there from the 22d of 1905, until the 1st of November, 1906.

Were you there during the month of August, 1906?—A. Yes, sir.

And on duty as post quartermaster-sergeant?—A. Yes, sir.

And who was in command of the post at that time?—A. Major ose, sir; that is, a portion of the time.

He was in command during the month of August so long as his mand remained there?—A. Yes, sir.

What companies were on duty there at that time?—A. Com-s B, C, and D of the Twenty-fifth Infantry, sir.

Where did you live, Sergeant, at that time, with respect to any e that you want to name?—A. Quarters No. 13, sir.

It doesn't appear on this plat?—A. No, sir; 13 is right opposite pump house; there is nothing on there beyond the hospital.

That that is marked "13" ought to be "B"?—A. That ought e B, that one down there.

Your house is known as——A. Officers' quarters, No. 13.

And now occupied by noncommissioned officers, or was at that t?—A. Yes, sir.

Your quarters faced the stables and were back of what is known he lagoon?—A. Were beyond the stables and beyond the pump e and on what is known as the lagoon.

(Counsel hands witness plat.)

ounsel: Witness says he lived in No. 13, which is to the south-of the guardhouse, and on this particular plat there are two s indicated as being close together and marked "Noncommis-d officers' quarters," situated between what is marked "Cav-barracks" and "Pump house" and facing toward one of the alry stables.)

sel for the accused:

e like to clear up with this witness about that road in front of the guardhouse

eant, is there any road in front of the guardhouse here, he building just to the west of the building marked "A F" on plat.)—A. No, sir.

e any kind of a road that goes up [illegible] from direction of the hospital?—A. [illegible] where r with carts—for police carts a[illegible] but any farther than that (point[illegible] is a

ch, then, on the northe[illegible] out-hwest of the guardhouse.

the relations and conditions in the South; they were perfectly familiar with them before they came down here.

Q. But service in Brownsville was not popular with the Twenty-fifth Infantry?—A. A great many men would rather have been elsewhere, while at the same time there were many men who were willing to put up with the hardships to get to soldier in some little town, they had been so far West so long.

Q. But as a general thing the men did not feel any kinder disposed toward the town people than the town people did toward them?—A. I couldn't say that they did.

(At request of counsel for the accused the reporter read the following question and answer from the examination by the court: "Q. Do you know whether or not there existed a feeling of resentment, *for any cause*, against the people of Brownsville on the part of the command at Fort Brown, or any part of it?—A. I do not, sir.")

Counsel for the accused:

I would like to have the court or whoever asked that question to fix the time, or permit the witness to answer the question as to what time he referred to.

The presiding officer:

I don't know; I presume it was prior to this trouble.

Counsel for the accused:

We would like to have it straightened up, because we don't know what it refers to. I will just straighten it out by questioning the witness.

REDIRECT EXAMINATION.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. Sergeant, in answering that question, did you have in mind the service of the men in Brownsville previous to the night of the 13th and 14th of August?—A. Yes, sir.

Q. And not the feeling after that?—A. No, sir; I had no reference to the feeling after that.

Counsel for the accused:

I would like to have the question read, including the question and answer quoted from the book entitled "Brownsville Affray," asked by the assistant judge-advocate.

(The reporter read the question as recorded on page 1682 [792], being the last question thereon).

(Witness excused.)

ROWLAND OSBORN, post quartermaster-sergeant, United States Army, a witness for the accused, was then duly sworn, and testified as follows:

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please state your name, rank, and present station?—A. Rowland Osborn, post quartermaster-sergeant, Fort Sam Houston, Tex.

Q. Do you know the accused? If so, state who he is.—A. Major Penrose, sir; Twenty-fifth Infantry.

DIRECT EXAMINATION.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. Sergeant, how long have you been in the service?—A. Twenty-eight years, sir, and five months.

Q. How long have you been a quartermaster-sergeant?—A. I have been a post quartermaster-sergeant twenty-one years, eleven months, and twenty days.

Q. Sergeant, have you ever served at Fort Brown, near Brownsville, Tex.?—A. Yes, sir.

Q. When did you serve there?—A. I served there from the 22d of June, 1905, until the 1st of November, 1906.

Q. Were you there during the month of August, 1906?—A. Yes, sir.

Q. And on duty as post quartermaster-sergeant?—A. Yes, sir.

Q. And who was in command of the post at that time?—A. Major Penrose, sir; that is, a portion of the time.

Q. He was in command during the month of August so long as his command remained there?—A. Yes, sir.

Q. What companies were on duty there at that time?—A. Companies B, C, and D of the Twenty-fifth Infantry, sir.

Q. Where did you live, Sergeant, at that time, with respect to any house that you want to name?—A. Quarters No. 13, sir.

Q. It doesn't appear on this plat?—A. No, sir; 13 is right opposite the pump house; there is nothing on there beyond the hospital.

Q. That that is marked "13" ought to be "B"?—A. That ought to be B, that one down there.

Q. Your house is known as——A. Officers' quarters, No. 13.

Q. And now occupied by noncommissioned officers, or was at that time?—A. Yes, sir.

Q. Your quarters faced the stables and were back of what is known as the lagoon?—A. Were beyond the stables and beyond the pump house and on what is known as the lagoon.

Q. (Counsel hands witness plat.)

(Counsel: Witness says he lived in No. 13, which is to the southeast of the guardhouse, and on this particular plat there are two houses indicated as being close together and marked "Noncommissioned officers' quarters," situated between what is marked "Cavalry barracks" and "Pump house" and facing toward one of the old cavalry stables.)

Counsel for the accused:

I would like to clear up with this witness about that road in front of the guardhouse

Q. Sergeant, is there any road in front of the guardhouse here, which is the building just to the west of the building marked "A?" (Indicates on plat.)—A. No, sir.

Q. Is there any kind of a road that goes up to the guardhouse from the general direction of the hospital?—A. There is a place where they can enter with carts—for police carts and police purposes—but they can't go any farther than that (pointing on plat); there is a ditch there.

Q. There is a ditch, then, on the northern side of the guardhouse?—A. It is southwest of the guardhouse.

Q. What was the condition of these barracks at that time; what did you see there?—A. I saw a lot of cast-off uniforms, old shells, some ammunition, some belts scattered around.

Q. Did you see any bandoliers?—A. Yes, sir; quite a number of them.

Q. About how many uniforms did you see throwing around, and what uniform was it?—A. It was principally khaki uniform, sir; and I presume there were on an average of 10 uniforms to a set of barracks.

Q. Did you formulate an idea of how many of the other articles you mentioned there were throwing around the barracks?—A. No, sir; I didn't pay any attention; there were some caps hanging up there and some old dress coats, and here and there a pair of dress trousers; principally they were khaki trousers.

Q. About the shells and cartridges you noticed?—A. There were quite a number.

The judge-advocate:

I will have to object to this class of examination; there has been nothing said about shells or cartridges; I object to that particular question; it is leading.

(At request of counsel the question and answer objected to were read.)

Counsel for the accused:

I confess I am in the dark as to what the judge-advocate objects to.

The judge-advocate:

Read the objection to counsel.

(The reporter here read the objection.)

(The reporter was then requested by counsel to read the following answer by the witness: "A. I saw a lot of cast-off uniforms, old shells, some ammunition, some belts scattered around.")

The judge-advocate:

I misunderstood the testimony; the objection is withdrawn.

Q. About how many shells would you say you saw in those barracks?—A. I suppose, sir, about 500 in each barracks. They were in boxes sitting around.

Q. You say you saw some ammunition. Can you give us an idea of how much of that you saw?—A. No, sir; I could not. I know I picked up 40 rounds in original packages of 20 rounds myself and got them out.

Q. What kind of ammunition was that?—A. Krag-Jörgensen ammunition.

Q. Did you see any other kind of ammunition or shells there?—A. I did not examine.

Q. How many of these bandoliers did you say you saw?—A. I suppose I saw a hundred of them, sir, scattered around the buildings.

Q. Do you know anything about the practice at that time with regard to those bandoliers—were they preserved and returned to the arsenal or not?—A. I don't know about that. I would surmise they were not, because when I left there, after the Twenty-fifth left there, there was some still there in the barracks.

Q. What became of those articles?—A. They were left in the bar-

Q. What is done with that character of stuff?—A. It is usually thrown out on the dump.

Q. Where is the dump?—A. In that case, it was in the eastern portion of the barracks, next to the river.

Q. Inside the reservation?—A. Yes, sir.

Q. Do you mean to say it was dumped into the river?—A. Yes, sir; usually. All that is not carried off by Mexicans. Most of it is carried off by Mexicans as fast as it is thrown out.

Q. I understood you to say you gathered up some Krag ammunition and still have it?—A. Yes, sir.

Q. Did you gather up any other ammunition?—A. No, sir; I just picked that little up, as I thought I might go hunting sometime and might need it.

QUESTIONS BY THE ASSISTANT JUDGE-ADVOCATE.

Q. Could you tell us, Sergeant, what kind of firing you first heard—could you tell whether it was rifle or revolvers?—A. I thought it was revolver at first.

Q. You thought it was night drill?—A. Yes, sir.

Q. The troops down there were armed only with a rifle?—A. Yes, sir.

Q. Except possibly a few noncommissioned officers who were armed with revolvers?—A. Yes, sir.

Q. But as a general thing the enlisted men are armed only with rifles?—A. Yes, sir.

Q. And the impression you formed at the time of this shooting was that the troops were having a night drill?—A. Yes, sir.

Q. Were there some fairly good volleys fired?—A. No, sir; I didn't hear but the one.

Q. You heard one good volley?—A. No, sir; it was a scattering volley; more like a skirmish-line fire at will.

Q. About how many shots would you judge were fired altogether?—A. I suppose about 15 or 20.

Q. Altogether?—A. I never heard any more than that; I went off to bed and didn't hear any more.

Q. Your idea was that it was a night drill, and you didn't pay any attention to any more of the shots or anything else?—A. No, sir.

Q. What date was it when you went through those barracks and found old clothes and ammunition?—A. I don't know the exact date; I think about the 6th of July, immediately after the battalion had left there.

Q. And there was at that time only a sm ll detchment of the Twenty-sixth left, and they were living in quarters No. 36?—A. Yes, sir.

Q. Were the quarters marked "B," "D," and "C" on the map cleaned out prior to their occupancy by the Twenty-fifth Infantry?—A. No, sir.

Q. So that those companies had to clean up their own barracks after they arrived?—A. Yes, sir.

Q. Do you know whether or not the stuff was loaded up on wagons and carried down to the river and dumped out?—A. No, sir; I do not.

Q. That is usually the case?—A. Yes, sir.

Q. They would drive down to the edge of the river and dump the stuff in?—A. Yes, sir.

Q. How deep is the river there where they dump this stuff in?—A. Probably 25 or 26 feet; I don't know exactly.

Q. If those khaki clothes were thrown in the water they would sink, wouldn't they?—A. I don't know about that; I presume they would after getting wet good.

Q. Now, these shells that you found, were they shells that had been fired—the empty cartridge cases? Were those good cartridge cases or were they apparently cartridge cases that were not worth sending to the arsenal?—A. I didn't examine them; I simply saw them sitting there in boxes in the storeroom.

Q. But it is customary for troops to return all empty shells that are in sufficiently good condition to stand reloading—to return these shells to the arsenal and get credit for them?—A. I presume so, from the fact that I have had them turned over to me for shipment several times.

Q. What kind of empty shells were these?—A. Rifle shells.

Q. The Krag-Jörgensen or not?—A. I couldn't say as to that; I didn't examine them.

Q. But these loaded shells you found were Krag-Jörgensen?—A. Yes, sir.

Q. And you didn't examine these other shells?—A. No, sir.

Q. After the Twenty-sixth Infantry left Fort Brown, with the exception of that detachment left in quarters No. 36, were the barracks left open or not?—A. They were locked.

Q. Were the windows nailed down?—A. Yes, sir.

Q. So it was impossible for anyone to get in the barracks without breaking in there during the time between the departure of the Twenty-sixth Infantry and the arrival of the Twenty-fifth Infantry?—A. Yes, sir; but they did break in, nevertheless.

Q. Do you know what they took?—A. No, sir; outside of a few pieces of tableware in the one building.

Q. But you don't know of anything else that was taken?—A. No, sir.

Q. Now, the bandoliers are ordinarily thrown away, are they not, after the cartridges have been taken out?—A. I don't know what disposition is made of them.

Q. You stated that the Mexicans down there wore khaki to a considerable extent in summer. Now, as a general thing they wear trousers, or rather individuals among them wear trousers of light cotton cloth of various colors, do they not?—A. Yes, sir; various colors.

Q. Some light and some dark and some of a brown color?—A. Yes, sir.

Q. But they very rarely wear complete suits all of the same color, do they?—A. No, sir,

Q. As a general thing the average Mexican in that part of the country dresses in a light pair of trousers, with his shirt open at the front, without any coat?—A. They dress in about anything they can get hold of, is my experience.

Q. But they do not dress in complete khaki-colored clothes?—A. No, sir.

Q. And the policemen down there, they wear a uniform that looks

considerably like the khaki?—A. They wear complete khaki suits, the majority of them.

Q. How about the size of these men? Are they as large as the average man?—A. Some are larger than the average and some smaller.

Q. They are all Mexicans?—A. Yes, sir.

Q. There are no negroes or white men?—A. There are some; yes, sir.

Q. Aside from the chief of police; I mean the ordinary policemen are Mexicans?—A. Yes, sir; the ordinary policemen are Mexicans.

REDIRECT EXAMINATION.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. Sergeant, during the time you were there was shooting more or less common at night in Brownsville?—A. Yes, sir; almost every night you could hear shooting.

Q. Quite a lot of it?—A. Yes, sir.

QUESTIONS BY THE COURT.

Q. Why is Fifteenth street called the "firing line?"—A. Well, sir, because it is populated by Mexican prostitutes.

Q. Did you sweep the loaded ammunition also into the dump pile with the empty shells, clothes, bandoliers, etc.?—A. I did not sweep any of it; I sent a detail there to clean the quarters out.

Q. What became of the loaded ammunition?—A. It was left in barracks, sir, as far as I know, with the exception of two packages that I carried out—40 rounds.

Q. During the time that you were stationed at Fort Brown, were any troops stationed there armed with the new model Springfield rifle prior to July 28, 1906?—A. Yes, sir.

Q. What troops were they?—A. Companies I, K, L, and M, of the Twenty-sixth Infantry.

REDIRECT EXAMINATION.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. By the new model Springfield you mean the Springfield rifle that was originally issued to the Army, and without the new cutting bayonet?—A. I mean the new Springfield rifle that was issued in lieu of the Krag-Jörgensen rifle; they were received, to the best of my recollection, in May.

(Witness excused.)

The court then, at 4.55 p. m., March 7, adjourned until 10 o'clock p. m. [a. m.], March 8, 1907.

CHAS. E. HAY, Jr.,
Captain, Acting Judge-Advocate, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., March 8, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocates. The accused, his counsels, and the reporter were also present.

The reading of the proceedings of March 7 was dispensed with.

The judge-advocate then addressed the court as follows:

The telegram received by me yesterday, which was presented to the court and counsel for inspection, was not made a matter of record. As this telegram was in answer to one which has been incorporated in the record I now ask the pleasure of the court as to whether it also shall be copied into and made a part of the record.

By the president of the court:

If there is no objection, the judge-advocate is instructed to have the telegram copied in the record.

By counsel for accused:

In this connection I would like to say, that in reading the account of the proceedings of the day on which the court was cleared for the express purpose of having nothing appear in the press, I notice that enough was said about what went on to indicate clearly that too much had gotten out and, as I say, the distinct purpose of counsel was to avoid that. There was too much in there to have had this appear as a guess or at random, and we hope that if it becomes necessary in future to avoid things going to the press, and that is the distinct purpose as announced, that the various avenues will be closed by the court from such publications.

By the president of the court:

I understand that this telegram has been shown to the court and the counsel and it will not be necessary, unless there is objection, to have it read now.

By counsel:

We do not care to have it read.

Following is the telegram referred to:

WASHINGTON, D. C., *March 7.*

Capt. CHARLES E. HAY, Jr.,
Judge-Advocate, San Antonio, Tex.:

Reference your telegram 6th instant, Quartermaster-General has been instructed to furnish transportation to San Antonio to witnesses named in your telegram and Paymaster-General ordered reimburse Quartermaster's Department for cost of said transportation, deducting amount from mileage to which witnesses entitled. Francois Oltmans, sergeant, Hospital Corps, will be ordered San Antonio as witness.

MCCAIN, *Military Secretary.*

Private O. C. WEST, Company B, Twenty-sixth Infantry, a witness for the defense, was duly sworn and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please state your name, rank, and present station.—A. Otis C. West, Company B, Twenty-sixth Infantry, private; Fort Sam Houston, Tex.

Q. Do you know the accused? If so, state who he is.—A. Yes, sir; Major Penrose.

QUESTIONS BY THE ACCUSED.

Q. Did you ever serve at Fort Brown in the city of Brownsville, Tex.?—A. Yes, sir.

Q. When?—A. I came there from the Islands—landed the fore part of September, 1893.

Q. 1903, you mean?—A. I think so; yes, sir; and stayed there until the following summer; we exchanged stations with Company M of Fort Ringgold; we stayed there until last year in June; we was removed to Fort Brown.

Q. Were you a part of the detachment that was left behind from the companies of the Twenty-sixth Infantry?—A. Yes, sir.

Q. I mean when they left there, and were subsequently relieved by the Twenty-fifth Infantry.—A. I was.

Q. On what duty were you at that time, on extra duty?—A. On extra duty, working for the quartermaster as teamster.

Q. Were you driving a team hauling the freight of the battalion of the Twenty-sixth Infantry from the barracks to the depot, etc.?—A. Yes, sir.

Q. When was this, about? Do you recall the date?—A. I could not give the date.

Q. But it was the day the battalion left, the Twenty-sixth?—A. Yes, sir; after we got the order to vacate Fort Brown and come to Fort Sam Houston, and the order to Austin to the maneuvers.

Q. Did you look through those barracks at the time they were vacated?—A. One or two of them I was through.

Q. What did you note left in the barracks by the command—what articles, if any?—A. Generally as all soldiers leave rubbish like cast-off clothing, shells, scattered ammunition, old shoes, hats, etc.

Q. Did you see any leggings?—A. Yes, sir.

Q. What kind of clothes do you refer to; what were they; what are they called?—A. They were khaki.

Q. About how many suits were there that you observed in each of these barracks that you looked into, of this khaki?—A. That I could not say, but there was quite a lot of it.

Q. Can you give us any idea of how many empty shells you noticed around?—A. No, I could not; no more than that there were a good many left through the barracks loose.

Q. Did you see any cartridges at all in the barracks?—A. Yes, sir.

Q. Do you know what rifles that command was armed with at that time?—A. I think it was the Springfield, the new model.

Q. Did you see any outsiders around the barracks at that time, or after that? About that time?—A. Yes, sir.

Q. Who were they and what were they doing?—A. They were mostly boys and women; a few Mexicans.

Q. Were the boys and women Mexicans too, generally speaking?—A. Yes, sir.

Q. Did you see any of them carrying away any of this stuff that was left?—A. I did.

Q. Did you see anybody carrying away any ammunition?—A. I did.

Q. Who was it?—A. I call to mind one, a Mexican boy, about 12 or 14; he had quite a lot in a hat.

Q. How many did he have in this hat?—A. That I could not say; quite a good many.

Q. Is it not the practice in the Twenty-sixth Infantry—in Company B—for men to pick up the shells on the range after they have fired them and turn them in to the quartermaster-sergeant or other non-commissioned officer?—A. I will answer that this way: I can say I do not know, because I was never in Company B until I reenlisted last time. I have always been in Company I, six years.

Q. What was the practice in Company I?—A. Our orders were always to return the empty shells—the ones we fired.

Q. Was not this the general practice throughout the battalion?—A. I suppose it was.

Q. For each man to turn in the empty shells after he had fired on the range?—A. My captain always said we would be charged up with shells that was not returned.

Q. Do you know what was done with these shells afterwards, ordinarily—did you ever see the artificer or anyone else cleaning them, or decapping them?—A. I have seen our company do it—Company I.

Q. Is not that the general practice in that battalion, for the serviceable empty shells to be decapped and packed and shipped to the arsenal?—A. I so understand it is.

Q. And the only ones that are left out are those that are unserviceable; is that not right?—A. I could not answer to that.

Q. I mean as a general custom.—A. I suppose that is the custom.

Q. Did you examine closely any of these old shells you saw in the barracks?—A. No, sir.

Q. Do you know what kind of cartridges those were the boy had in his hat?—A. They looked like the ordinary cartridge we use in our rifles.

Q. You could not tell whether they were Krag-Jörgensen or Springfield?—A. No, sir; I was on the wagon.

Q. Was this clothing all ragged, torn stuff, thrown away, or was it good clothing?—A. Well, now, I can't answer that definitely. Some would be pretty fair; I did not examine that closely; I know the Mexicans were picking it up; what they done with it I can't say.

Q. When you changed station before down there, from Fort Brown to Ringgold and so on, temporarily or permanently vacated barracks, wasn't it customary for the poor people, Mexicans, negroes, etc., to come around and help themselves to what clothing they could get?—A. Yes, sir.

Q. The very poor people, as a rule?—A. Yes, sir; they certainly do.

Q. Will you please state again what you said with reference to that statement made by the boy?—A. I was driving when I met him, and I asked, "Kid, what are you doing with those shells?" and he said, "I am going to take them downtown and sell them to kill niggers with."

Q. What was his manner when he said that?—A. He kind of laughed at me. I have seen him often, and paid no attention to it.

Q. So his manner indicated——A. I could not say whether he was in earnest or joking.

Q. But he laughed when he said it? He was going to take them downtown to kill niggers with, and laughed?—A. Yes, sir.

EXAMINATION BY THE COURT.

Q. Did the company with which you served at Fort Brown have target practice with the new Springfield rifles while at Fort Brown?—A. No, sir.

Q. (Repeated.) Did the company with which you served at Fort Brown have target practice with the new Springfield rifles while at Fort Brown?—A. No, sir; they did not.

Q. Did you see any clips of the new rifles in the barracks at the same time you saw the empty shells and cartridges?—A. Yes, sir.

Q. Did you see any bandoleers?—A. Yes, sir.

Capt. J. F. PRESTON, Twenty-sixth Infantry, a witness for the defense, was duly sworn and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please give your name, rank, and present station.—A. John F. Preston, captain, Twenty-sixth Infantry; Fort Sam Houston, Tex.

Q. Do you know the accused? If so, state who he is.—A. I do. Maj. Charles Penrose, Twenty-fifth Infantry

QUESTIONS BY THE ACCUSED.

Q. How long have you known Major Penrose, Captain?—A. I met Major Penrose when he was on a visit to his father at Fort Douglas, Utah. I think it was about 1895.

Q. Have you ever served with him at all, Captain?—A. I served with Major Penrose for about four days at Fort Brown, Tex., when my company was ordered to relieve his battalion at that post, last August.

Q. How much service have you had, Captain?—A. Seventeen years next June.

Q. And you have had considerable experience as adjutant?—A. I was adjutant of the Sixteenth Infantry as a first lieutenant and adjutant of the Twenty-sixth Infantry as a captain.

Q. For about how long all together?—A. Between five and six years.

Q. You are now commanding your company?—A. I am.

Q. Captain, have you recently made any test in the inspection of rifles that had been fired?—A. Yes, sir.

Q. What date was it you made that, as near as you can recall?—A. The first experiment was made February 3, of this year.

Q. How many rifles were used?—A. Four rifles.

Q. How many of those were fired?—A. Three of them were fired. If the court will permit me I made some data on the subject which I have in my pocket.

Q. Did you make this data at that particular time?—A. I did.

By the judge-advocate:

We understand that is to refresh his memory; not to be read.

By the witness:

Oh, just to refresh my memory.

A. On February 3, at about 6.30 o'clock in the evening, Captain Dichmann and myself took three of these guns out on the new cavalry drill ground. These guns were all marked so they could be distinguished from each other. One gun had no mark whatever on it; one gun had one red string; one gun had two red strings, and the fourth gun had three red strings. The gun not marked was not fired and left at Captain Dichmann's house. The gun with one string was fired twice; the gun with two red strings was fired eight times; the gun with three red strings was fired fifteen times.

Q. Captain, did you subsequently inspect these guns—the bores of these guns—to see if you could detect powder stains therein, that night?—A. I did; yes, sir.

Q. You made it that same night?—A. That same night.

Q. Under what conditions did you make it; under what class of artificial light?—A. By lamplight.

Q. What kind of lamp was it?—A. I think one of the Rochester burners, round tin lamp or nickel lamp.

Q. What was the result of your particular examination of the bore by that light?—A. I couldn't tell in the ordinary examination, like I would examine a gun of my company at Saturday morning inspection, that any of them had been fired.

Q. Did anybody else examine these guns at that time, at your suggestion?—A. Yes, sir.

Q. Who else examined them at that time?—A. Capt. I. A. Saxton, Twenty-sixth Infantry.

Q. Tell the court the result of Captain Saxton's examination of those guns and just what occurred.

By the judge-advocate:

Captain Saxton is here himself, may it please the court, and I don't think this is the best evidence and I object to it being introduced.

By counsel for accused:

If this witness is allowed to answer this question it will show what Captain Saxton did at this time; he was called in, knew nothing about the guns having been fired, and was asked to inspect them and report the result of his inspection, and Captain Saxton's evidence clearly would not be as intelligent, to the point, and as instructive to the court as this evidence of this witness who was there and knew what guns had been fired and can report exactly what Captain Saxton announced as a result of his examination. We are perfectly willing to introduce Captain Saxton to confirm the part which he did examine. These two witnesses are the only ones that can give you an intelligent report of what occurred as a result of Captain Saxton's inspection. It is the best evidence, may it please the court; not hearsay at all.

By the judge-advocate:

I still object.

The accused, his counsels, the witness, the reporter, and the judge-advocates then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce the decision that the objection is sustained.

By counsel for accused:

I would like to have the question read over. (Stenographer read the question from record.) We would like to have noted the benefit of an exception to that ruling of the court, so as to emphasize it.

EXAMINATION BY THE COURT.

Q. Did the company with which you served at Fort Brown have target practice with the new Springfield rifles while at Fort Brown?—A. No, sir.

Q. (Repeated.) Did the company with which you served at Fort Brown have target practice with the new Springfield rifles while at Fort Brown?—A. No, sir; they did not.

Q. Did you see any clips of the new rifles in the barracks at the same time you saw the empty shells and cartridges?—A. Yes, sir.

Q. Did you see any bandoleers?—A. Yes, sir.

Capt. J. F. PRESTON, Twenty-sixth Infantry, a witness for the defense, was duly sworn and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please give your name, rank, and present station.—A. John F. Preston, captain, Twenty-sixth Infantry; Fort Sam Houston, Tex.

Q. Do you know the accused? If so, state who he is.—A. I do. Maj. Charles Penrose, Twenty-fifth Infantry

QUESTIONS BY THE ACCUSED.

Q. How long have you known Major Penrose, Captain?—A. I met Major Penrose when he was on a visit to his father at Fort Douglas, Utah. I think it was about 1895.

Q. Have you ever served with him at all, Captain?—A. I served with Major Penrose for about four days at Fort Brown, Tex., when my company was ordered to relieve his battalion at that post, last August.

Q. How much service have you had, Captain?—A. Seventeen years next June.

Q. And you have had considerable experience as adjutant?—A. I was adjutant of the Sixteenth Infantry as a first lieutenant and adjutant of the Twenty-sixth Infantry as a captain.

Q. For about how long all together?—A. Between five and six years.

Q. You are now commanding your company?—A. I am.

Q. Captain, have you recently made any test in the inspection of rifles that had been fired?—A. Yes, sir.

Q. What date was it you made that, as near as you can recall?—A. The first experiment was made February 3, of this year.

Q. How many rifles were used?—A. Four rifles.

Q. How many of those were fired?—A. Three of them were fired. If the court will permit me I made some data on the subject which I have in my pocket.

Q. Did you make this data at that particular time?—A. I did.

By the judge-advocate:

We understand that is to refresh his memory; not to be read.

By the witness:

Oh, just to refresh my memory.

A. On February 3, at about 6.30 o'clock in the evening, Captain Dichmann and myself took three of these guns out on the new cavalry drill ground. These guns were all marked so they could be distinguished from each other. One gun had no mark whatever on it; one gun had one red string; one gun had two red strings, and the fourth gun had three red strings. The gun not marked was not fired and left at Captain Dichmann's house. The gun with one string was fired twice; the gun with two red strings was fired eight times; the gun with three red strings was fired fifteen times.

Q. Captain, did you subsequently inspect these guns—the bores of these guns—to see if you could detect powder stains therein, that night?—A. I did; yes, sir.

Q. You made it that same night?—A. That same night.

Q. Under what conditions did you make it; under what class of artificial light?—A. By lamplight.

Q. What kind of lamp was it?—A. I think one of the Rochester burners, round tin lamp or nickel lamp.

Q. What was the result of your particular examination of the bore by that light?—A. I couldn't tell in the ordinary examination, like I would examine a gun of my company at Saturday morning inspection, that any of them had been fired.

Q. Did anybody else examine these guns at that time, at your suggestion?—A. Yes, sir.

Q. Who else examined them at that time?—A. Capt. I. A. Saxton, Twenty-sixth Infantry.

Q. Tell the court the result of Captain Saxton's examination of those guns and just what occurred.

By the judge-advocate:

Captain Saxton is here himself, may it please the court, and I don't think this is the best evidence and I object to it being introduced.

By counsel for accused:

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By the judge-advocate:

I still object.

The accused, his counsels, the witness, the reporter, and the judge-advocates then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce the decision that the objection is sustained.

By counsel for accused:

I would like to have the question read over. (Stenographer read the question from record.) We would like to have noted the benefit of an exception to that ruling of the court, so as to emphasize it.

Q. Did you do anything toward cleaning any one of these guns that night? If so, what, Captain?—A. The gun that had been fired fifteen times had the brush which comes in the butt of the gun for cleaning purposes, was run through twice, and a dry rag was also run through twice, which operation took about twenty seconds, and that gun, when examined, looked very brilliant, even when the electric light was turned on and allowed to shine right into the muzzle; it looked exceptionally brilliant, and it could not have been told it had been fired.

Q. Did you cause any one to select from this bunch of four guns, that night of February 4, which had been fired?—A. The four guns were standing, leaning up against a table, and Captain Dichmann and myself asked Captain Saxton to pick out from among those four guns any gun that had been fired, if any had. He examined all four guns, and when he arrived at the gun which had been fired twice he said, "If any gun has been fired this one has, although it looks pretty bright."

Q. Did you examine these same four guns the following morning?—A. I did.

Q. I mean for powder stains in the bore?—A. Yes, sir.

Q. With what result?—A. The three that had been fired showed evidences the following morning that they had been fired.

Q. Including the one that had been fired fifteen times and had the rags pulled through it?—A. Yes; all of them appeared as if they had been fired, except the one, of course, which had not been fired.

Q. Then by daylight you had no trouble in detecting that all had been fired?—A. By daylight, and the fact that the guns had remained for twelve hours or more, the powder stains showed inside, and apparently a few grains of powder were seen in the chamber.

Q. About what time of night was it when you examined them before this lamplight, Captain?—A. It was about 7 o'clock—between 7 and 8 o'clock. It was dark when we started out to make the experiment.

Q. Have you repeated this experiment since that time?—A. Yes, sir.

Q. When?—A. On March 7, about 8 o'clock p. m.

Q. How many guns did you take out this time, Captain, or did you have taken out?—A. This time these same four guns were very thoroughly cleaned on the afternoon of March 7 by the regimental commissary-sergeant, thoroughly cleaned, and that night we took out three of the guns. They were marked in the same way as before. The gun with one string was fired twice, the gun with two strings was fired eight times, the gun with three strings was left in the quarters not fired, and the gun which had not been fired before was fired this time fifteen times.

Q. Did you inspect them afterwards by artificial light?—A. I did.

Q. If so, state to the court the result of your inspection for powder stains.—A. Captain Dichmann and I inspected these rifles upon return to quarters, which was about 8 p. m., and by lamplight we could not detect that any had been fired. One of these rifles, the one with two strings, which had been fired eight times, had a rag and the brush pulled through twice, which took about one minute, slightly less. That rifle, when examined even by brilliant electric light, appeared very bright and brilliant; in fact, appeared brighter than the rifle which had not been fired.

Q. Did you examine this by a light that was as near a lantern light as you could get?—A. Yes, sir; we examined them by lamplight turned down so it would be as near to a lantern as possible, probably a little more brilliant.

Q. And from that light, as I understand, you could not detect whether they had been fired or not?—A. Examining these rifles the same as I would at a company inspection, I could not.

Q. Did you examine these rifles by daylight?—A. Examined them this morning; yes, sir.

Q. With what result?—A. The three that had been fired showed powder stains in them, and even the rifle which had been brilliant last night was dim this morning.

CROSS-EXAMINATION.

QUESTIONS BY THE ASSISTANT JUDGE-ADVOCATE.

Q. Did you run a white rag through any of these guns prior to running the brush wiper through and examine the rag afterwards for powder stains?—A. As I remember, the brush was run through first twice, then the rag—dry rag.

Q. This morning, when you inspected the guns last fired, did you run a rag through any of the guns to see whether a residue would come off?—A. I did not. The guns have not been touched since they were fired; that is, since last night.

Q. How long did it take you to walk into your quarters from the point where the firing took place, or to drive in?—A. The first time we went in an ambulance, and it probably took less than fifteen minutes.

Q. From the time the firing began until through?—A. Probably less than fifteen minutes.

Q. And last night?—A. Last night we did not go so far, so it took less than ten minutes.

Q. And at this time there were no evidences of the guns having been fired, so far as you could determine?—A. At this time in examining the guns the same as I would at Saturday inspection—that is, with a dim light—I could not detect any evidences they had been fired.

Q. Did you again look at these guns an hour and a half afterwards, to determine whether any powder stains were visible by lamplight?—A. I did not.

Q. So you do not know anything about whether or not it is possible to determine whether or not a gun has been fired by an inspection of the same made by lantern light at any time between fifteen minutes after it was fired and approximately twelve hours afterwards?—A. I can not pose as an expert on the subject whether a rifle has been fired or not. I can simply give the result of what I did, how I did it, and the results obtained.

Q. You do not know therefore whether a gun that is examined an hour and a half after it has been fired—examined by artificial light, I mean—shows stains or marks of having been fired?—A. I do not know, as I have never done it.

Q. You used the regulation steel-jacketed bullet?—A. Regulation bullet issued by the Ordnance Department.

Q. Was the bolt removed from the rifle at the time you made the inspection by lamplight?—A. In making the inspection in the way I would in a company, no; but I did inspect them also by removing the bolt.

Q. Was the piece held so that the light shone directly in front of the bore as you looked through it—did you look straight at the light, or hold it to one side?—A. In which examination is this?

Q. In the first examination, we will make it.—A. I looked through the bore so as to permit the light to shine into the chamber.

Q. But not so you looked directly at the light? You just had the reflected light, in other words, rather than direct light?—A. It is impossible to get direct light into the barrel without removing the bolt.

EXAMINATION BY THE COURT.

Q. Were these rifles examined by Captain Saxton the identical rifles fired by you and Captain Dichmann, and none other mixed with them?—A. They were. They were the only rifles we had. Those rifles were kept in Captain Dichmann's quarters from the time they were first fired until the present moment, and, as far as I know, they are in his quarters now.

Q. Was an oiled rag used in cleaning the rifles during the cleaning with the brushes; and if so, was it soaked with oil, and did you use a dry rag subsequently?—A. The only rag used was dry.

Q. Have you ever experimented with a gun that had been fired to ascertain how long it would require to thoroughly clean it?—A. To a certain extent, yes. By that I mean that these very same guns which had remained since February 3 until yesterday afternoon were thoroughly cleaned by the regimental commissary-sergeant, who is an expert shot, member of the army team, distinguished marksman, etc., and the time it took him to clean these rifles was noted by Captain Dichmann and myself; they were cleaned in our presence.

Q. Please state how long it was.—A. When he first started in he did not know exactly—in fact, he did not know the purpose of cleaning them and he took his time on the first rifle. I did not note that time, at least I haven't it here—I have it at the house—but as I remember the first rifle was about twelve minutes; the second was a little faster, about eight minutes, and the third rifle was about six minutes. These rifles, however, after having remained at Captain Dichmann's house for over a month without ever having been cleaned, were rusty and difficult to clean.

Q. With what comparative ease and expedition can a gun still hot be cleaned to one that has been allowed to cool?—A. One that has just been fired can be very readily cleaned; the other, allowed to remain for some time, with some difficulty. This is based simply on my experience with this particular rifle. I don't wish to pose as an expert on the subject of cleaning rifles, as I have not done very much of that myself.

Q. Did you examine by lamplight the rag used in cleaning the guns?—A. I can't say that I did. I saw the rag, but whether I looked at it by lamplight or electric light I can't state.

Q. Did the rag show any powder stain?—A. The rag had black stains on it, a few black stains, which I presume were powder stains.

RECROSS-EXAMINATION.

QUESTIONS BY ASSISTANT JUDGE-ADVOCATE.

Q. You stated, Captain Preston, that the gun that was cleaned with the brush wiper and the rag soon after the firing last night—soon after that particular rifle was fired—showed signs this morning of having been fired.—A. I did.

Q. Was the interior of the barrel noticeably different in appearance from that of the one that was not fired at all?—A. This morning?

Q. Yes.—A. It looked different.

Q. So that you could readily tell it had been fired? There was no doubt in your mind?—A. There was no doubt in my mind that it had been.

Q. And the mere fact that the rifle was marked and you knew it had been fired did not influence you in this; the signs were clear?—A. The signs appeared unmistakable. There was a grayishness to the interior of the barrel, especially near the muzzle, which was not apparent in the other gun, and it was apparent in all the three guns that had been fired, which I presume was the effect of the action of the air upon the powder remaining in the gun over night.

Q. Did you ever examine a gun that had been fired but two or three times by daylight? That is, rather, did you ever examine by daylight a gun that had been fired two or three times and notice whether it showed signs of having been fired?—A. I examined the guns mentioned, which had been fired twice, the following day.

Q. Do you know whether the new Springfield cartridge—that the residue remaining in a gun barrel can be detected by daylight a few minutes after the piece has been fired?—A. As a result of these experiments I would say yes, in daylight.

Q. These guns were examined in daylight, however, only after a lapse of ten or twelve hours, were they not?—A. We did not fire them until dark, so we had to wait until the following morning.

REDIRECT EXAMINATION.

QUESTIONS BY THE ACCUSED.

Q. In this cleaning yesterday by the sergeant who did it, to what was the cleaning limited, if limited at all? That is, what was the actual cleaning that was done; was it the bore simply?—A. The bore, simply, I am referring to. I intended to intimate that. It was the bore only I was trying to have him clean.

Q. It didn't include preparing the gun for orderly bucking or anything of that sort?—A. No, sir; he didn't touch the stock or any of the woodwork.

Q. Or any of the screw heads?—A. No, sir; only the bore.

Q. Did it include thorough cleaning of the breech bolt?—A. No, sir.

Capt. H. M. DICHMANN, Twenty-sixth Infantry, a witness for the defense, was duly sworn and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please state your name, rank, and present station.—A. Henry M. Dichmann; captain, commissary, Twenty-sixth Infantry. Station, Fort Sam Houston, Tex.

Q. Do you know the accused? If so, state who he is.—A. I do; Major Penrose, of the Twenty-fifth Infantry.

QUESTIONS BY THE ACCUSED.

Q. How long have you known Major Penrose, Captain?—A. I think the first time I met Major Penrose was on the 3d of February, 1907.

Q. Here at Fort Sam Houston?—A. At Fort Sam Houston.

Q. Tell the court what your service has been, will you, Captain? Just the length of service.—A. I entered West Point on the 21st of June, 1893; graduated on the 11th of June, 1897, and have been in the service ever since as a commissioned officer.

Q. Captain, did you have occasion to make an experimental inspection of rifles within the last two months?—A. I have.

Q. These were the Springfield rifles of the present model in use by the Army?—A. The model of 1903, Springfield rifles.

Q. How many of these rifles did you use, Captain?—A. Four.

Q. Tell the court how many times they were fired and who was with you. The date first.—A. On February 3, 1907, in company with Captain Preston, of the Twenty-sixth Infantry, we took four rifles of this model and going out to the target range near the post, at about quarter past 6 that evening, we fired one rifle twice; another rifle eight times, and another rifle fifteen times. The other rifle that we took along was not fired.

Q. What was the condition of that rifle that you took along that was not fired?—A. Clean.

Q. Was it very clean or not?—A. It was a particularly clean rifle; looked to me as if it belonged to some member of the company who had probably used it for getting orderly.

Q. Did you mark these rifles in any way, so as to distinguish them?—A. We did.

Q. How?—A. The rifle which was not fired was not marked. The rifle which was fired twice was marked with one piece of office tape tied around the swivel, the upper gun-sling swivel. The one fired eight times had two pieces of tape tied at the upper gun-sling swivel, the one that was fired fifteen times had two pieces of tape around the gun-sling swivel and one around the upper part of the gun sling, making three pieces of tape on that rifle.

Q. Did you subsequently inspect these rifles to determine whether or not you could find evidences of their being fired—by artificial light?—A. We did.

Q. What was the result of this inspection?—A. All rifles looked to me—when we came back from the target range that afternoon

it was quite dark. We lit a lamp in the room in my quarters. By the light given forth by this lamp I inspected the rifles, and they all looked to me to be clean.

Q. You made an honest effort to find the result of this powder stain, did you, at that time by means of that light?—A. Yes, sir.

Q. What kind of light was that?—A. It was a light from a lamp that I have in my room. I think it is known as the Juno lamp; I am not certain.

Q. But it has a large circular wick?—A. It uses the same size wick that is issued in the Government pendant lamp, or bracket lamp.

Q. Did you make any attempt to clean any one of these rifles that had been fired? If so, which one, and how?—A. The rifle which had been fired fifteen times we made a superficial attempt to clean it by running through it the pull through that can be found in the stock of all the guns that are issued, consisting of a piece of string and a bristle brush. That was run through twice. We then followed it by running through a piece of dry white rag twice.

Q. And this process consumed how much time?—A. Approximately twenty seconds; however, all things were in readiness when we ran them through.

Q. Did you cause these guns—these four rifles—to be inspected by anyone else? If so, whom, and with what result?—A. Capt. Isaac A. Saxton, Twenty-sixth Infantry, entered the room while we were making this experiment. I spoke to Captain Murphy, who was present, and asked him if he did not think it advisable to have Captain Saxton look at the rifles. With Captain Murphy's consent the rifles were handed to Captain Saxton, who inspected them all very thoroughly.

Q. Did you state to him the purpose of his inspection?—A. We did not.

Q. Well?—A. He looked at all the rifles very carefully, and when he finished remarked——

By the judge-advocate:

I object on the grounds that that is hearsay evidence and not competent. Captain Saxton being present on the post can be called as a witness.

By associate counsel:

The witness is cautioned not to repeat the remarks of Captain Saxton; just give the result of his observation.

Q. What was the result?—A. The result of the inspection was that the rifles were determined practically clean.

Q. Did he select any one as having been fired?—A. Not positively.

Q. Which one did he say might have been fired, or what did he say in selecting this one, if he selected one?—A. Selecting the rifle which had been fired twice—I can not answer that without saying what he said.

Q. Did he state positively that this had been fired or what did he say about it?

By the judge-advocate:

I object to that as hearsay.

By counsel for accused:

May it please the court, this was in evidence without objection from the other witness; the other witness stated positively, and the record will bear us out, that in

CROSS-EXAMINATION.

QUESTIONS BY THE ASSISTANT JUDGE-ADVOCATE.

Q. In your first experiment was any effort made by you to determine whether powder stains or residue left in the interior of the bore could be detected by artificial light one and one-half hours after the firing?—A. Not an hour and a half after.

Q. Or two hours?—A. Not two hours.

Q. Or three hours?—A. No.

Q. Do you know whether Captain Murphy or anyone else made any effort to determine this?—A. Not in my presence.

Q. Do you know whether Captain Murphy did or not?—A. I do not.

Q. The same lamp was used in each experiment, I believe you stated?—A. The same lamp.

Q. How close to the lamp was the rifle held?—A. Varying distances; all the way from right next to the lamp to some distance away—5 or 6 feet.

Q. So there is not a possibility of the brilliancy or proximity of the light having dazzled your eyes so you were unable to detect this slight residue remaining?—A. Not at all.

Q. Did you ever look through one of the modern Springfield rifles by daylight immediately after a few shots had been fired from it?—A. I did.

Q. And with what results?—A. Can tell it right away.

Q. But by artificial light you are unable to?—A. Unable to determine.

Q. Was any effort made to get a lantern to conduct these experiments with, so as to more nearly approximate conditions existing at Fort Brown on the night of August 13?—A. There was not. I believe there was. I believe Captain Preston said he tried to get a lantern; but I didn't have any, and I am certain there is none in our building.

Q. The greatest distance this rifle was held from the lamp was 5 or 6 feet?—A. About that; because the room is about 14 by 16, and the lamp was in the center of the room.

Q. Was Captain Saxton positive that none of the other rifles had been fired?—A. He was positive as to several of them, or at least I won't say exactly positive.

Q. He was not positive?—A. I won't say exactly positive, but the language he used indicated to me that he stated certain rifles had not been fired.

Q. Did you run a rag through each of the several rifles this morning?—A. I did not.

Q. Through any of them?—A. I did not.

Q. Did you on the morning after the previous experiment?—A. I did not.

EXAMINATION BY THE COURT.

Q. As a result of your experience in gun cleaning, will you please state whether the gray color you noticed in the interior of the gun barrels fired was the result of the powder stains, per se, or as a result of chemical action which had taken place between the metal of the barrels and the chemical components of the powder?—A. I do not know. It can be removed.

Mr. O. J. MATLOCK, a witness for the defense, was duly sworn and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please state your name.—A. O. J. Matlock.

Q. Residence.—A. Present, Jeffersonville, Ind.

Q. Present occupation.—A. Clerk in the Quartermaster's Department.

Q. Do you know the accused? If so, state who he is.—A. Major Penrose, sir, of the Twenty-fifth Infantry.

QUESTIONS BY THE ACCUSED.

Q. How long have you known Major Penrose, Mr. Matlock?—A. I believe, sir, since the 28th of August last.

Q. Don't you mean the 28th of July?—A. Yes, sir; it is the 28th of July. I got the dates mixed.

Q. He was in command of Fort Brown during the time you knew him?—A. Yes, sir.

Q. What were you doing at Fort Brown at that time?—A. I was clerk in the quartermaster's office.

Q. At Fort Brown?—A. Yes, sir; at Fort Brown.

Q. In Brownsville, Tex?—A. In Brownsville, Tex.

Q. How long had you been clerk in the quartermaster's department at Fort Brown?—A. I had been there since December 12, 1904.

Q. You had been continuously on duty as quartermaster clerk at Fort Brown from December, 1904, including the time that Major Penrose and his command were stationed there?—A. Yes, sir.

Q. You were there the night of August 13–14, Mr. Matlock?—A. Yes, sir.

Q. Did you hear anything unusual that night?—A. I heard that shooting, sir.

Q. Where were you at the time you heard this, Mr. Matlock?—A. I was in the noncommissioned officers' quarters, back of the guardhouse.

Q. Look at that map and show us, if you can.—A. It was right along side that letter A—a house there at the letter A.

Q. Small house, at the eastern end of the guardhouse?—A. Eastern end of the garrison, just back of the guardhouse, but not connected with it.

Q. Were you inside of the house or on the porch?—A. On the porch, sir.

Q. That porch is on which side, Mr. Matlock?—A. It fronts toward the hospital, over that way (indicating a general southerly direction).

Q. You heard this shooting, then, when it first commenced?—A. Yes, sir; I think I heard the first shots.

Q. And where did you locate this shooting, Mr. Matlock?—A. The direction seemed to me back up toward the barracks and toward the town.

Q. Would you attempt to locate it any more accurately than that?—A. I don't think I could, sir; it was some distance away and sounded just toward the town and behind the barracks from where I was.

Q. How long did this shooting keep up?—A. I should say between six to ten minutes; sounded to me about that time. I should judge about that time.

Q. What kind of firing was it, Mr. Matlock?—A. It sounded like mixed firing to me—like mixed shots; they were not all alike.

Q. You don't pose as an expert on detecting the various kinds of shots?—A. No, sir. I know when the shooting first broke out. I was listening to it and trying to determine as well as I could what kind of shots it was, or what kind of rifles or guns they were using, and I thought it was different kinds; some would be dull and some would be sharp.

Q. And your recollection on that point is very clear; that there was a marked distinction?—A. Yes, sir; because I remember remarking on the fact at the time it happened.

Q. During this shooting did you go away from that point at all?—A. Yes, sir; I went up to the guardhouse to see if I could find out from the men what was the trouble; I thought perhaps they would know.

Q. Did you pass along the south side of the guardhouse?—A. Yes, sir.

Q. Isn't there a post exchange there?—A. The post exchange is between the guardhouse and the road.

Q. Indicating the road that passes down in front of the officers' quarters?—A. Yes, sir.

Q. What did you see when you got in front of the guardhouse, or around there?—A. As soon as I passed around the corner of the guardhouse where the men could see me they called to me to halt, and the man nearest me asked who I was, as they usually challenge a man, and I told them who I was and asked what was the trouble, and one of the men—I am inclined to think he was sergeant of the guard, I am not positive of that, but he appeared to be—and he answered me and said, "We don't know; that's what we are trying to find out." And there was some few other words, I don't remember the conversation now, but then afterwards they told me to go back to the house I was at and stay there, and stay inside; that there was shooting going on and that I might get hurt.

Q. Did you see any of the guard, aside from this man you took to be sergeant of the guard, at that time? If so, what was their arrangement?—A. There were 4 or 5 men, maybe 6 men, I don't know just how many, I didn't count them; they were in a line out in front of the guardhouse, I should say a circular line rather, and they seemed to be very much excited and frightened and were constantly looking around to see if any person was coming, or if there was anything for them to take notice of.

Q. Very much on the alert?—A. Very much so; yes, sir.

Q. Can't you go over to that plat and indicate how those men were with respect to the front of the guardhouse, or make it clear any way?—A. There is a covered porch in front of that guardhouse, or shed I should say, and the men were out in front of that shed, strung along across the front of the guardhouse.

Q. And looking in what general direction, as far as you could see?—A. They were looking in that direction, this direction, and this direction.

Q. Generally in a semicircular direction around the guardhouse?—A. Possibly looking this way and that way too.

Q. You went back then to the house where you had been visiting?—A. Yes, sir.

Q. Did you receive any further instructions that night?—A. Yes, sir; I believe it was the sergeant of the guard came down to the house some ten or fifteen minutes, perhaps, after the shooting was all over, and I was still sitting out on the front porch waiting until they would let me go back to my house; I wanted to get back to my house, and he said——

By the judge-advocate:

I object to the introduction of hearsay evidence.

Q. I want to know, Mr. Matlock, exactly what instructions you got, if any, from that sergeant of the guard or anybody in authority.

By the judge-advocate:

I still maintain that is hearsay, but will interpose no objection.

By the counsel:

It is what somebody said, but you can't get an order in any other way, may it please the court; somebody has got to speak to give an order, or write it.

Q. What was the order given?—A. He told me to go back in the house and put out the light, and he said there might be some persons coming over that way from the town or the country beyond the town and he wanted the lights out so they would not attract any attention if people were shooting around there.

Q. How long did you remain there?—A. Possibly an hour.

Q. And then where did you go?—A. Over to the hospital. I saw some lights there and some men sitting on the porch, and I wanted to find out what I could and I went over there.

Q. From the hospital where did you go?—A. To my house.

Q. Where is your house?—A. It is B quarters, down in the corner next to the river, sir (indicating the small quarters on the western end of the officers' row).

CROSS-EXAMINATION.

QUESTIONS BY ASSISTANT JUDGE-ADVOCATE.

Q. You stated that when you first heard the shooting your impression was it was just behind the barracks toward the town.

By counsel:

He didn't say so; he said in the direction back of the quarters toward the town. I am going to ask that the counsel be instructed, if he is going to quote the language of witnesses, that he quote it as accurately as possible so as not to give an erroneous impression of the record. I have no objection to the question, except its form, and if he will kindly do this, we will interpose no objection.

Q. About how far over to the rear of the barracks was this shooting?—A. I could not tell anything, because the house where I was is beyond the barracks from the town and I could not tell how near to the barracks the shooting was.

Q. Could you tell whether the majority of the shots fired were apparently fired from rifles? Did they have a sharp crack as distinguished from the duller sounds you mentioned?—A. I could not say

as to that. I believe, although, that the majority did sound as a sharp sound. I would not be positive, because I had no way of judging.

Q. Were there any times when you heard a number of these sharp cracks and could differentiate between them and the times when you heard occasional dull shots too?—A. It is my impression that the first shots nearest to me were interspersed or mixed with those dull shots right along from start to finish. That's my impression of it.

Q. Did you ever hear the Krag-Jörgensen or the Springfield rifle fired on the range?—A. Never on the range, but I have heard them fired.

Q. Did these sharp reports you heard sound similar to the shots you had heard fired from the Springfield rifle?—A. I should say, sir, they sounded similar, but I could not say they were exactly the same; I am not positive as to that.

Q. Was there a light in the guardhouse when you reached there?—A. I am not positive, sir; I don't remember.

Q. How close did you come to those men who were lying on the ground in front of the guardhouse?—A. I don't believe they were lying on the ground. I did not see anybody lying on the ground.

Q. How close did you come to this semicircular line in front of the guardhouse?—A. The nearest man to me was 5 or 6 feet.

Q. And the farthest man you saw?—A. Possibly 30 or 40 feet.

Q. Can't you recollect now whether there was a light at the guardhouse or not?—A. I can not, sir.

Q. How many men did you see there standing in this line, if they were standing? I don't know that you have described their position.—A. There were 4 to 6, perhaps. I could not tell. I did not count them. My recollection is there were 6.

Q. Were they standing or kneeling?—A. They were standing, I believe, sir; all of them. I don't remember seeing anyone kneeling.

EXAMINATION BY THE COURT.

Q. Did you see the flashes of the guns at any time; and if so, where did they appear to be?—A. I did not see any flashes of the guns.

Q. In your capacity as clerk in the Quartermaster's Department, are you familiar with shipments of Government stores, losses of shipments, or parts of shipments, etc? If so, were any Springfield rifles, new model, lost in shipment, as per invoices, at any time while you were at Fort Brown?—A. I never heard of any, sir.

Q. (Repeated.) In your capacity as clerk in the Quartermaster's Department, are you familiar with shipments of Government stores, losses of shipments, or parts of shipments, etc.?—A. I usually knew of all the shipments that were made down there, and also the receipts of property.

Q. If so, were any Springfield rifles, new model, lost in shipment, as per invoices, at any time while you were at Fort Brown?—A. I don't remember hearing of any loss of property at all of that kind.

Q. How long had you been on the porch prior to the first shots you heard?—A. Possibly about two hours, or two hours and a half.

Q. Had you fallen asleep while sitting there prior to hearing those shots?—A. No, sir.

REDIRECT EXAMINATION.

QUESTION BY THE ACCUSED.

Q. As a matter of fact, in regard to these shipments brought out in that question by the court, was it your duty at all to know anything about whether consignments of rifles were necessarily complete, further than to know the original package had arrived all right?—A. No, sir.

The court then took a recess until 2.25 o'clock p. m., at which hour the members of the court, the judge-advocates, the accused, his counsel, and the reporter resumed their seats.

MATIAS G. TAMAYO, a witness for the defense, was duly sworn and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please state your name, your residence, and your occupation.—A. Matias G. Tamayo.

Q. Your residence?—A. Brownsville, Tex.

Q. Your occupation?—A. Right now I am a carpenter. While I was working for the Government I was scavenger.

Q. Do you know the accused? If so, state who he is.—A. Yes, sir; Major Penrose.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. How long have you lived at Brownsville?—A. I lived there since I was a little boy. I was born and raised at Brownsville.

Q. How long did you hold the position of scavenger?—A. Six years.

Q. That is, at Brownsville?—A. Yes, sir.

Q. Were you in Fort Brown on the 13th of last August—the night of the 13th and 14th?—A. Yes, sir.

Q. You were performing your work as scavenger that night?—A. Yes, sir.

Q. And as scavenger you had to visit the sinks of the several companies?—A. Yes, sir.

Q. Do you remember visiting the sink of what is known as B Company, Twenty-fifth Infantry, that night?—A. Yes, sir.

Q. About what time did you go to that sink?—A. About ten minutes to 12.

Q. Well, how long did you work there about the sink at that time?—A. Ten minutes.

Q. You left your cart standing there during that time?—A. Yes, sir; I left my cart standing there and went into the barracks to get a drink of water when I got through.

Q. When you got through your work at the sink you went into the barracks——A. Yes, sir.

Q. To get a drink of water?—A. Yes, sir.

Q. You went back to your cart then?—A. Yes, sir.

Q. Where did you go to then?—A. I went back to the kitchen of B Company barracks.

Q. Come over here to the map and show the court, if you understand the map, where that kitchen is.—A. (Witness goes to map.) Right here. (Witness indicates point a little to the east of the corner of the west end and in the rear of the barracks toward town.)

Q. Is the kitchen at this corner of the building—this west end?—A. Yes, sir; it is right here (pointing).

Q. Is there a porch there?—A. Yes, sir; there is a porch there.

Q. What kind of a porch is it?—A. Right along here (indicating the west end of the barracks) is a latticework.

Q. And is there an entrance to the kitchen there?—A. Yes, sir; and steps right there. I was in front of them steps when I heard the first shot.

Q. Is there a platform there before you get to the steps—do the steps go up on a platform and then into the kitchen?—A. No, sir; there is a platform on this side, right here (pointing).

Q. I am talking about right here (pointing).—A. No, sir; only steps; the steps go up on the porch there.

Q. Does that porch extend the whole length of the barracks?—A. Yes, sir.

Q. Now, which side of the steps—that is, the east side or the west—was the ash can kept?—A. Around on this side, about 10 feet away from the porch, on the ground.

Q. In driving in there, did you pass your cart between the can and the porch, or not?—A. Between the can and the porch.

Q. So that the ash can was on the side of your cart toward the wall?—A. Toward the town; yes, sir.

Q. And you say that you were at that point emptying the ash can when the shots were fired?—A. Yes, sir; I emptied the ash can, and as I went to set the can on the ground I heard the first shot, and then I heard all the rest of the shots; I heard about 20 shots while I was there.

Q. Where was this first shot fired?—A. In town.

Q. Can you show the court about where you located it?—A. Yes, sir. (Witness goes to map.) Right here.

Q. That is where you think the first shot was fired?—A. Yes, sir.

Q. Now, where were the other shots—those 20 shots you say you heard?—A. I think they were fired right here in the Yturria alley.

Q. Now, you indicated that it was close to the house of Mr. Cowen?—A. Yes, sir.

Q. Do you think it was as far up the alley as that, or was it closer to the garrison than that?—A. Right along here is where I heard the shots. (Witness moves his pointer back and forth from the mouth of the alley on Fourteenth street to a little beyond the back lot of Cowen.)

Q. Did you see anybody at all when these shots were fired?—A. No, sir.

Q. Did you see any flashes of guns?—A. No, sir.

Q. Well, how long did you stay at that particular point there?—A. About a minute and a half or two minutes.

Q. What did you leave there for?—A. I left there because I heard some bullets going into the post toward the administration building,

and I thought I was in danger, so I thought I better get away from there.

Q. Did you have a light on your wagon?—A. Yes, sir; I had a lantern.

Q. Where was that lantern, and what kind of a lantern was it?—A. I had it on my cart, right on the left-hand side.

Q. What kind of a lantern was it?—A. It has a kind of a search glass to it.

Q. What we call a bull's-eye lantern?—A. Yes, sir.

Q. Was this lantern burning when the shooting commenced?—A. Yes, sir.

Q. Did you do anything with the lantern at all?—A. Yes, sir; as soon as I heard the first shots I put my lantern out.

Q. You say you went away from there because you heard shots passing over toward the administration building?—A. Yes, sir.

Q. How did you do this?—A. I jumped on my cart and drove pretty fast, at a walk. I stopped for a few seconds in front of D Company barracks to see the soldiers coming out; that was the time I heard the first bugle call, and as soon as the first bugle call sounded all the bugles blowed—just the same as when they have a fire drill—and then I got away from there and went to the administration building.

Q. And how long did you stay there?—A. About ten minutes.

Q. Had the firing ceased?—A. Yes, sir.

Q. Where did you go to from there?—A. I went inside the administration building to clean up a couple of sinks over there, and when I got out of there I stood behind a tree that is on the right-hand side as you go inside; the firing ceased and then I turned back and come to D Company barracks and finished my work there.

Q. While you were back of D Company barracks did you see any of the soldiers?—A. Yes, sir; there is where I first saw the soldiers, along the side of the fence, kneeling down.

Q. How long were you at D Company there at that time?—A. About ten or fifteen minutes—ten minutes.

Q. Did you have any talk with Major Penrose about that time?—A. Yes, sir; right there between the sinks and the company.

Q. Do you remember what you told Major Penrose at that time?—A. Yes, sir.

Q. Tell the court as nearly as you can recollect it what you told Major Penrose at that time.—A. The first question Major Penrose asked me was, did I see the sentry on that post, and I told him yes, sir; and then he asked me where I had seen him, and I told him, and he asked me how long before the shooting, and I told him about two minutes before the shooting, and then he asked me several questions about the shooting, where I was and what I was doing and where I went, and all such questions as that.

Q. And did you tell him substantially as you have told the court here?—A. Yes, sir; the same thing.

Q. When did you see that sentinel, and where were you when you saw him?—A. When I saw the sentinel was the time I went to get the drink of water at D Company barracks, and that was a little before the shooting.

Q. Where did you go in—in the middle entrance?—A. In the middle entrance of the barracks, because there was a sink there.

Q. Was there anybody else present at this D Company sink when you told Major Penrose about this shooting?—A. Yes, sir.

Q. Who was it?—A. I think Captain Lyon and also the sentry; he was right there.

Q. Now, was that the same sentry that was on the post around the barracks there?—A. Yes, sir.

Q. Well, now, were you interviewed by Captain Lyon and your statement taken about all that?—A. The next morning, about half past 6 o'clock in the morning, they sent after me.

Q. Do you know anything about whether the companies were out at inspection the next morning?—A. Yes, sir; they were all out at inspection that morning.

Q. Now, was this interview before or after the inspection, as you recollect it now, by Captain Lyon, the next morning?—A. You mean the three companies?

Q. No. Was this when Captain Lyon had you make an affidavit?—A. That was about half past 6 in the morning.

Q. Will you look at that paper? (Hands witness paper.) Is that your signature attached to that paper?—A. Yes, sir.

Q. Did you swear to that before Captain Lyon that morning?—A. Yes, sir.

Counsel for the accused:

We would like to have this read in evidence at this point.

The judge-advocate:

May it please the court, the prosecution interposes an objection at this point to the introduction of this paper. It is an ex parte affidavit, and the witness is here himself and can testify to the material facts in it without introducing this ex parte instrument in evidence, and we will have to interpose an objection.

Associate counsel for the accused:

May it please the court, in reply to the objection of the judge-advocate we will state that the purpose of the introduction of this affidavit is not to establish in evidence before the court any fact therein contained, but it is to establish the fact, however, that this is the witness and that it is his affidavit, and it was made before the summary court officer at Fort Brown, Tex., and furnished the information to Major Penrose, the accused, which determined his action on that morning. It is simply evidence of that fact and not as testimony of any facts contained therein. It simply establishes a basis of action for Major Penrose in rebuttal of the allegations contained in specifications upon which he is being tried.

Counsel for the accused:

Of course, when introduced it is subject to cross-examination by the prosecution, if they see fit, and we will add that that has been done right along in this case to show that he has made such ex parte statement in cross-examination, and without objection.

Associate counsel for the accused:

As I understand it, the judge-advocate objects to the introduction of an affidavit as an ex parte statement, and it is objectionable on that point, though it serves to establish certain facts which are contained in that affidavit, but it is pertinent evidence to establish a basis of action for Major Penrose, and that is all it is introduced for.

Assistant judge-advocate:

May it please the court, as shown by the testimony of the witness a few moments ago, this affidavit was taken either immediately before or immediately after or about the same time of the inspection. It wasn't brought out clearly that it was made before the inspection on that following morning, and it seems to me that there is no clause in the charges that alleges the omission or commission or of anything after

daylight of the morning of the 14th, and it was after daylight, unless I am greatly mistaken, that this affidavit was taken, and the time in the charges does not reach beyond daylight on August 14.

Counsel for the accused:

Now, may it please the court, there is no court in the country that don't admit evidence to establish a basis for action, as has been very properly stated by the associate counsel, and, may it please the court, when the proper time comes we will show by the officer who was present when he made this original statement that it was reduced to writing as early as possible after that particular time, and was placed in the best form possible for the investigation that had certainly to take place as soon as it was practicable to place it in that form, and the only other person who can testify on that is the officer before whom this affidavit was taken and who is a witness in this case, and we will connect it up when the proper time comes—and I might add we have connected it already—the statement as made to Major Penrose in the presence of an officer; and we will show why it was reduced to writing early that morning, and positively what this witness said that it was before the inspection of the pieces on the following morning, and therefore there could not be a better basis of action than what we claim for it now.

Assistant judge-advocate:

May it please the court, I would ask the stenographer to read the notes with reference to the time that this affidavit was taken; or possibly the counsel for the defense can state whether the witness has stated whether it was before the inspection.

(The reporter reads the last three questions and answers of the witness on page 1752 [826] of the record.)

Q. Was this affidavit taken before the inspection that morning?

Assistant judge-advocate:

I object to that as a leading question.

Q. Do you know whether this was before or after the inspection?—A. I think it was after the inspection, because I had to wait about half an hour. I got there at 6 o'clock that morning, and I waited there for about half an hour.

Q. Do you know whether the companies were still out in front of the barracks when you made this affidavit?—A. I think there was one out there.

Counsel for the accused:

We haven't anything further to say now. We want to introduce this affidavit, may it please the court, and there is a question before the court.

Assistant judge-advocate:

Upon my again reading these charges over I can find absolutely nothing in the second specification that would render the introduction of this affidavit at all pertinent, and the first specification merely alleges certain neglects that took place between 1 and 2 in the morning of August 14 and daylight, and nothing that happened after daylight. Any statement made after daylight, as the one made by this witness, is not admissible; then it was taken ex parte; the witness is here now where he can be examined, and any sworn statement made after those events by the witness is not admissible.

The accused, his counsel, the judge-advocates, the witness, and the reporter then withdrew, and the court was closed, and, upon being opened, the presiding officer announced, in their presence, as follows:

I am instructed by the court to announce the decision that the objection is not sustained. The paper will be admitted in evidence.

The associate counsel then read the following:

FORT BROWN, *State of Texas:*

Personally appeared before me, the undersigned authority, one Matias G. Tamayo, scavenger at Fort Brown, Tex., who, being duly sworn according to law, deposes and says:

That at about 12.10 a. m. on the morning of August 14, 1906, he was in rear of the quarters occupied by Company B, Twenty-fifth Infantry; that about this time a shot was fired, by some person unknown, in the street just outside the wall dividing the military reservation from the town of Brownsville, Tex.; that he could hear the bullet, and that it appeared to be going in the direction of the Rio Grande River, about parallel to the above-mentioned wall; that immediately following this one shot a number of other shots were fired, all outside the wall.

Deponent further says that previous to the shooting he saw no soldiers anywhere in rear of the quarters occupied by the companies of the Twenty-fifth Infantry and heard no talking or news of any kind; and that he saw and heard no shot or shots from any of the company barracks.

MATIAS G. TAMAYO,
Scavenger, Fort Brown, Tex.

Sworn to and subscribed before me this 14th day of August, 1906.

SAMUEL P. LYON,
Captain, Twenty-fifth Infantry, Summary Court.

Q. Now, about how long were you in rear of B Company quarters, counting the time it took you to empty the sinks?—A. About ten minutes.

Q. Did you see any men of any of the companies between B Company barracks and the wall?—A. No, sir.

Q. I mean during that time?—A. During that time; no, sir.

Q. Did you hear any men during that time?—A. No, sir.

Q. Now, during the time that you were there and at the corner, including the time that you were there and the time that you remained there after the firing commenced, did you see or hear any shots inside the wall?—A. No, sir.

Q. Or near the barracks?—A. No, sir.

Q. Did this shooting continue up to the time you reached the administration building?—A. Yes, sir.

Q. Did you see any of the companies go around in rear of the barracks or toward the town side of the barracks?—A. I saw them going toward the wall.

Q. Was the firing still going on when you got behind that tree?—A. Yes, sir.

Q. Where did you go after you got through at D Company sink?—A. I went to the officers' quarters.

Q. And finished your work there?—A. And finished up there and went toward the river to that dump.

Q. Then where did you go?—A. I went home and went to bed about 3 o'clock that morning.

Q. Was there anybody else that asked you questions about this thing that same night except Major Penrose and Captain Lyon?—A. Yes, sir.

Q. Who?—A. Just Major Penrose and Captain Lyon, that is all.

Q. And this was down there, as you say, by D Company sink?—A. Yes, sir.

CROSS-EXAMINATION.

QUESTIONS BY THE ASSISTANT JUDGE-ADVOCATE.

Q. How do you know it was ten minutes of 12 when you were cleaning out B Company rear?—A. Well, because I used to hear 12 o'clock strike every night.

Q. Did you hear it that night?—A. I started to work at 11 o'clock that night, and it must have been about ten minutes to 12 when I got there.

Q. Do you know it wasn't five minutes of 12?—A. I think it must have been ten minutes.

Q. You are quite sure of that?—A. Yes, sir.

Q. When was the last time you saw a clock or heard a clock strike before that?—A. I think I was at the guardhouse—at the sinks there.

Q. What time?—A. About half past 11.

Q. Was the clock in the guardhouse?—A. No, sir; but there was a clock in the town.

Q. Does that strike the half hour?—A. Yes, sir; the half hour and the hour, too.

Q. You are sure it was exactly ten minutes to 12?—A. Well, sir; I am pretty sure it was.

Q. Did you see the sentinel?—A. Yes, sir.

Q. On that post that night?—A. I saw the sentinel when I went to get a drink of water, to B Company barracks; I went in and he——

Q. I just asked you if you saw him. Where was he at that time?—A. Who, the sentry?

Q. Yes.—A. He was walking his post the same as usual.

Q. What time was this?—A. It must have been about two minutes before the shooting.

Q. When did you see him again that night?—A. That night I saw him when Major Penrose talked to me about it.

Q. Those are the only two times you saw that sentry that night?—A. Yes, sir.

Q. One was about two minutes before the shooting began, when you went into D Company barracks to get a drink of water?—A. Yes, sir.

Q. Which side of the barracks was he on then?—A. On the back side, toward the wall.

Q. Do you know his name?—A. No, sir; not then; I found his name out afterwards. His name is Howard.

Q. Of what company?—A. I don't know, sir.

Q. Are you positive that you didn't see him any more between the time——A. I only saw him twice that night. That was when I first met him there when I went to get the drink of water, and when Major Penrose questioned me.

Q. And when you got the drink of water was at least two minutes before the shooting?—A. Yes, sir.

Q. You are sure about that?—A. Well, as soon as I got the water I went and jumped on my cart and drove away from the sink there and across the road.

Q. But you are sure it was just two minutes before the firing began that you saw this sentinel?—A. Yes, sir.

Q. And you never saw him again until you saw him in company with Major Penrose, after the firing was over?—A. Yes, sir.

Q. You will swear to that?—A. Yes, sir.

Q. Did you empty any other can aside from the one you spoke of in rear of D Company barracks?—A. No, sir.

Q. That is the only can?—A. Yes, sir; that is the only can.

Q. So that if you ever stated before with reference to this sentry that you met him when you were emptying the can, "He passed by the same as usual," you are mistaken?—A. No, sir.

Q. Did you ever state that before?—A. I don't remember.

Q. You never did?—A. No, sir.

Q. Did you ever make a statement before Mr. Purdy?—A. Yes, sir.

Q. Was that sworn to?—A. Yes, sir.

Q. Was it taken down by a stenographer?—A. Yes, sir.

Q. Typewritten?—A. Yes, sir.

Q. And you signed your name to it?—A. Yes, sir.

Q. You understood you were swearing to all that was contained therein, didn't you?—A. Yes, sir.

Q. I will read to you now a statement found on page 33 of the pamphlet entitled "Official Testimony Regarding the Brownsville Affray," which is a copy of your affidavit, taken before Mr. Purdy: "Q. Where was the sentry?—A. I met him when I was emptying that can; he passed by the same as usual." Did you ever make that statement, or not?—A. I think I did, but I made a mistake three. That ain't the truth. I meant when I went in the barracks to get a drink of water.

Q. So when you said he passed while you were emptying that can of ashes you made a mistake?—A. I never saw him when I emptied that can of ashes.

Q. So you swore here to what was not so?—A. Maybe so.

Q. Now, as to the location of that first shot; you pointed out here on the map to-day at first that it was right by the side of the Cowen house, near the north corner of the house, and then later you moved the pointer down.—A. That is Mr. Yturria's house.

Q. To-day in pointing it out on the map you pointed out as the location of that first shot a point just on the northern side—on the alley side—of the Cowen house, and said that was where that first shot seemed to you to come from.—A. Yes, sir.

Q. Is that true? Yes or no.

Counsel for the accused:

I object to that; it isn't exactly what the witness said. The witness indicated, it is true, and let his pointer rest at one place, and let it pass back and forth; and it is so described in the record that the first shooting was at a point indicated on the alley near the mouth and extending, as the witness indicated, off to that house, and I was particular to ask the judge-advocate what house, and he replied that it was such and such a kitchen, and I challenge the record. I may be in error that the witness didn't locate any one particular spot on that map for any one particular shot. However, I think I am correct.

Assistant judge-advocate:

May it please the court, if the counsel means by the mouth of the alley the extreme mouth of the alley near Fifteenth street, I most certainly challenge the record: if he means the intersection of the alley on Fourteenth street——

Counsel for the accused:

The mouth of the alley on Fourteenth street, and it is so stated in the record.

Assistant judge-advocate:

In that case the witness doubtless did move his pointer down there.

Counsel for the accused:

He can examine the witness as minutely as he pleases, if he will confine himself to a true statement and to what the record shows the witness stated. We want him to be fair, is all that we ask.

Q. The first shooting you heard was apparently in the alley and near the Cowen house, was it?—A. Yes, sir.

Q. Are you sure about that?—A. I can not very well tell in front of which house it was taking place.

Q. But it was in that direction?—A. Yes, sir.

Q. And it seems to you that it was as far away as that, does it?—A. Yes, sir.

Q. How long after the first shot you heard was it until the firing got to be pretty heavy?—A. About three shots after.

Q. How many minutes or seconds?—A. About four seconds.

Q. And when did you blow out your lantern?—A. When I heard the first shots. I think it was when I heard the third shot.

Q. You are sure it wasn't the second shot?—A. No, sir.

Q. It was the third shot. Isn't shooting quite frequent in Brownsville in the evening?—A. No, sir.

Q. Didn't people often shoot up the town down there?—A. No, sir.

Q. Don't people occasionally get drunk and fire their pistols in the air?—A. No, sir.

Q. So shooting is unusual down there. Is it unusual or a common everyday thing?—A. It is unusual.

Q. So that when you heard these shots what effect did it produce upon you?—A. I thought it was some kind of a fire in town.

Q. So you blew out your lantern thinking it was a fire?—A. Yes, sir.

Q. Do you always blow out your lantern when you think there is a fire?—A. No, sir; but one time I was going home——

Q. Never mind.

Counsel for the accused:

The witness has a perfect right to make an explanation. That has been decided by this court two or three times, and we object to the bulldozing of the witness in that way; we only ask that he be allowed a fair chance to make an explanation.

Assistant judge-advocate:

I asked him whether he regularly blew out his lantern when he thought there was a fire.

Counsel for the accused:

But you shut him off when he started to make an explanation. The court has ruled that he can do so.

Q. You thought it was a fire at the time?—A. Yes, sir.

Q. When did you first become sure it was not a fire?—A. When I heard all the shooting.

Q. Where were you then when all of this shooting started?—A. I was standing on the left-hand side of my cart, facing the wall.

Q. The left-hand side of your cart, facing the wall?—A. Yes, sir.

Q. Your mule was headed in which direction?—A. Toward C Company barracks.

Q. You stated that these bullets that you heard apparently were going in the direction of the administration building?—A. Not the first ones. I heard the first ones in town, and as soon as I heard the shooting in town I heard some coming in the post.

Q. And you were still there by that corner?—A. Yes, sir; that was the time I got away from there.

Q. And your mule was headed toward C Company?—A. Yes, sir; toward the road between B and C Companies.

Q. So your mule and wagon was facing toward the east—toward C Company?—A. Yes, sir.

Q. And this is the time you heard bullets coming into the post, apparently in the direction of the administration building, is that right?—A. Yes, sir.

Q. And if that was the case and the bullets going toward the administration building and your mule headed toward the east, why didn't you drive toward the east and not drive toward the administration building?—A. My mule was facing C Company on the west part——

Q. The mule was facing toward C Company?—A. Yes, sir; that way.

Q. That is away from the river.—A. I mean D Company. I made a mistake.

Q. Do you make mistakes like this often?—A. No, sir.

Q. You had just emptied the can, had you?—A. Yes, sir

Q. You drove in between the can and the barracks?—A. Yes, sir.

Q. And picked up the can and dumped it into the cart?—A. Yes, sir.

Q. And then you stood there listening to these shots?—A. I heard the first shots.

Q. And you stayed there right by the can and by your cart?—A. No, sir; I went around my cart.

Q. So as to get on the left side of your cart?—A. Yes, sir; but I could see the wall and the galleries.

Q. You said a minute ago that you were standing by the left side of your cart, facing toward the wall.—A. That is it; I was this way (illustrating). The shooting was taking place here, and I could see the barracks here (indicating), and the cart was right here.

Q. You now wish to have it changed so as to read that the mule was facing toward the west instead of the east?—A. Yes, sir.

Q. And when you started to drive away you drove between B and D Company barracks, did you?—A. Yes, sir.

Q. In front of D Company?—A. I stopped a few seconds at D Company barracks to see the men coming out of the barracks, and then I drove away from there toward the administration building. That is where I stopped.

Q. You were moving at a walk, I think you said, all this time?—A. Yes, sir.

Q. Were you frightened?—A. No, sir.

Q. Why not—you heard bullets going into the post?—A. I wasn't afraid.

Q. You are not afraid of bullets?—A. No, sir.

Q. You were not frightened at all?—A. No, sir.

Q. You were just as calm as you are this minute?—A. Yes, sir.

Q. So in case you testified before Mr. Purdy as follows: "Q. You were frightened?—A. Yes, sir——"—A. I told him very little.

Q. Wait a minute. I will read the rest of this: "Q. You were frightened?—A. Yes, sir. Q. Badly?—A. No; not very. Q. Did you expect to be shot?—A. Yes, sir." It doesn't frighten you when you expect to be shot? Did you expect to be shot then or not?—A. Yes, sir.

Q. And you were not frightened at all?—A. I was very little frightened; not much.

Q. But you heard these bullets coming into the post, didn't you?—A. Yes, sir; I heard the bullets coming into the post.

Q. You heard a good many of them?—A. Yes, sir.

Q. And they would zip through the air?—A. Yes, sir.

Q. And you thought you were going to be shot?—A. Yes, sir.

Q. And still you were not frightened?—A. No, sir; not much.

Q. So you just merely stood there and listened to the music of those bullets a while and then you drove your mule at a walk—A. I drove him at a walk, but fast.

Q. If you said at any time that you drove at a slow walk, you were mistaken; you weren't telling the truth?—A. I think it is just the same; at a walk, pretty fast.

Q. So there isn't very much difference in it going at a fast walk or slow walk, and it don't make much difference in swearing at a thing now that he was going at a fast walk if you have stated before that he was going at a slow walk?—A. No, sir; I stated I went at a fast walk.

Q. Anybody that says that they heard you going at a gallop that night—did you gallop your mule at all that night?—A. No, sir.

Q. Did he trot at all?—A. No, sir; he just went pretty fast, but at a walk.

Q. And those shots? They seemed to be coming from the direction of the Cowen house and from that vicinity and were coming toward the post?—A. Well, not all the shots; just a few shots went into the post.

Q. But you heard them zip?—A. Yes, sir.

Q. And that was the first shooting you heard after this first shot; that was the first shooting that was up in that neighborhood?—A. Yes, sir.

Q. In the vicinity of the Cowen house?—A. Yes, sir.

Q. Now, if you ever testified that the first shots were fired down near the corner of the garrison road and the alley, right in the direction of the Yturria house, you are mistaken about that?—A. No, sir; I don't think they were——

Counsel for the accused:

The witness has stated that on his direct examination that it was in the direction of the Yturria house twice—in the Yturria alley—and before the witness answers we would like to have the question read to see if we shall formulate an objection, because the question presumes something that isn't true, I think.

(Reporter reads last question.)

Assistant judge-advocate:

I will withdraw that question.

Q. It is about 100 yards, more or less, isn't it, from where you were to the Cowen house?—A. I don't know, sir; I couldn't very well tell you.

Q. What is your estimate of the distance; what do you estimate the distance to be from where you were to the corner of the Cowen house?—A. I don't know.

Q. You know how much a yard is?—A. Yes, sir; 3 feet.

Q. You are sure that all that first shooting took place well down the alley, toward the Cowen house?—A. Yes, sir.

Q. And that there were not any shots fired near the garrison?—A. Not while I was there; no, sir.

Q. And you waited until about 20 shots had been fired?—A. Yes, sir; and then I drove away from there.

Q. And you drove away deliberately at a walk?—A. Yes, sir.

Q. And hearing these bullets zip and yet not in the least frightened. The first shot was fired well down the alley, toward the Cowen house?—A. Yes, sir.

Q. You are positive about that?—A. Yes, sir.

Q. Absolutely?—A. Yes, sir.

Q. And you swear to that now?—A. Yes, sir.

Q. So, if on the morning of the 14th of August last year, you swore before Captain Lyon as follows, "That at about 12.10 a. m., on the morning of August 14, 1906, he was in the rear of the quarters occupied by Company B, Twenty-fifth Infantry; that about this time a shot was fired by some person unknown in the street just outside the wall dividing the military reservation from the town of Brownsville, Tex.," is that the truth, then?—A. I meant on the Yturria alley.

Q. You said in the street just outside the wall?—A. That means the alley.

Q. It does?—A. Yes, sir.

Q. So there isn't any difference between a point in the street just outside the wall and a point several hundred feet away, up an alley you have now indicated as the point where the firing began?—A. There is a lot of difference; yes, sir.

Q. But a little difference don't bother you very much?—A. Well, yes, sir; it does. I meant on the alley. Of course, if they had been fired on the street I could easily have seen them.

Q. Isn't that wall—the garrison wall—at the point in rear of the eastern end of B Company barracks about 4½ to 5 feet high?—A. The wall must be about 4 feet high.

Q. Are you sure it isn't 5 feet high there?—A. I don't know; it is about that high.

Q. It is the truth that the wall is lower nearer the river?—A. Yes, sir.

Q. But at a point opposite the mouth of the so-called Cowen alley, isn't it a fact that that wall is over 4½ feet high? Now, remember you are under oath.—A. Yes, sir; I think so.

Q. Is it not fully 4½ feet there?—A. Yes, sir.

Q. So that people on the other side could have fired guns without you seeing them?—A. Maybe so.

Q. When you were standing on the ground?—A. Yes, sir.

Q. When you were asked by Mr. Purdy, "Do you know whether these shots were inside or outside the wall," your answer was, "I think they were outside?"—A. Yes, sir.

Q. Now, you are absolutely positive that they were well up the alley?—A. Yes, sir.

Q. You are sure about that?—A. Yes, sir.

Q. And when you testified before Captain Lyon you testified, "That first shot was fired just outside the wall"——A. Well, I meant on the alley there.

Q. You talk English pretty well, don't you?—A. No, sir, not very well; just enough to understand; that's all.

Q. Which way was the sentry going when you saw him that night?—A. He was going this way—from east to west.

Q. He was coming from the east, then?—A. Yes, sir.

Q. Do you know which direction east is on that map—is it up or down on the map?—A. That way (indicates upward).

Q. Up?—A. Yes, sir.

Q. You know very well which way east is on the map now, but you didn't know before when you were talking about your mule being faced toward the east?—A. No, sir; I didn't know then; I got mixed up then.

Q. You got mixed up on the points of the compass?—A. Yes, sir.

Q. And you also got mixed up as to where C Company barracks were?—A. Yes, sir; I said C Company instead of D Company; I meant D Company.

Q. And so you said facing east toward C Company when you really meant facing west toward D Company?—A. That is it.

Q. It was merely a slight error. How long were you there at that can, emptying it?—A. I was there about two minutes.

Q. And then you heard this shot just after you had set it down on the ground?—A. Yes, sir; that is the time I heard the first shots.

Q. Then, did you put out your lantern right then?—A. Yes, sir.

Q. Right after the first shot?—A. Yes, sir.

Q. And you waited there a little while longer and heard some more shots?—A. Yes, sir.

Q. How many did you hear then?—A. About 20 shots.

Q. And you still stood there on the ground?—A. That is the time I got away from there.

Q. Was your mule frightened at all?—A. Very little frightened.

Q. Didn't he show any signs of being frightened at all?—A. Yes, sir; he started off a little and I checked him so he wouldn't go so fast.

Q. You wanted to wait and see what the trouble was?—A. Yes, sir.

Q. Why didn't you drive over that way and see what the trouble was?—A. That wouldn't do.

Q. You weren't frightened, however—were you frightened?—A. Well, sir; I was frightened when I heard those shots coming in the post. That is the time I was a little frightened.

Q. Why did you stop in front of C Company barracks?—A. I stopped there to see the men coming out.

Q. And then you drove up in front of the administration building?—A. Yes, sir.

Q. Right in front on the road?—A. Yes, sir.

Q. What did you do then; go inside the administration building?—A. Yes, sir.

Q. And then?—A. I cleaned up a couple of sinks then.

Q. Then you came out and stood behind a tree a while?—A. Yes, sir.

Q. Had the firing all stopped then?—A. The firing was still going on at the time.

Q. And you cleaned up those sinks, did you?—A. Yes, sir.

Q. There in rear of the administration building?—A. Yes, sir; pretty close to the river bank.

Q. And you could have gotten down under the bank if you had have been afraid of the bullets?—A. Yes, sir.

Q. But you weren't afraid much—afraid of them?—A. I wasn't very much afraid at the administration building because that was quite a distance from the shooting.

Q. Then you came out again and got behind a tree so a bullet wouldn't strike you?—A. Yes, sir.

Q. You were getting a little bit nervous for fear a bullet was going to hit you?—A. I just got behind it; I was a little frightened at the time.

Q. Did you dump those sinks in the river?—A. No, sir; I dumped them in the cart.

Q. Then you came out again and emptied your cart?—A. When the firing ceased I got away from that tree and jumped on my cart.

Q. Wait a minute. When was it you cleaned out the rear of the administration building?—A. As soon as I got there to the administration building I jumped off, tied up my wheel, and went inside.

Q. You stopped in front of the administration building?—A. Yes, sir.

Q. And then you walked through the building?—A. Yes, sir.

Q. And how far is it from the rear of the building to the sink?—A. Oh, it is about 25 yards.

Q. So you walked over there?—A. Yes, sir; I walked that way.

Q. Then did you pick up the cans there and carry them back through the building and dump them in the cart?—A. Only one.

Q. So you stopped your mule in front of the administration building?—A. Yes, sir.

Q. And walked through the building?—A. Yes, sir.

Q. And out 25 yards to this rear?—A. Yes, sir.

Q. And picked up a can and walked back the same way and dumped it in the cart?—A. Yes, sir.

Q. Usually you drove right down by the rear?—A. No, sir; I couldn't do it, because the river is about that far away from the administration building; I used to stop in front every night.

Q. And carry these cans through the building?—A. Only one can; yes, sir. There were two cans in there, but only one was used at that time.

Q. And you carried it right through the offices?—A. Yes, sir; right through the back hall.

Q. There isn't room enough for you to drive around there?—A. No, sir.

Q. And you came out and dumped these in the cart and then walked back and put the can in its place?—A. Yes, sir.

Q. And the shooting was going on at this time?—A. Yes, sir.

Q. Heavy volleys?—A. Yes, sir.

Q. Lots of shooting?—A. Yes, sir.

Q. And an ordinary man that hasn't a good deal of nerve would have felt frightened at the time?—A. I couldn't tell you.

Q. You were not afraid, were you?—A. No, sir; I wasn't afraid when I got there.

Q. You went on commonly about your work and got this can?—A. Yes, sir.

Q. Then all of a sudden you thought a bullet might hit you and you got behind a tree?—A. Yes, sir; I stood there until the firing ceased.

Q. Then you got in your cart and drove back by D Company—you didn't stop on the way down and talk to anybody, did you?—A. No, sir.

Q. Didn't you drive up near a soldier there and ask what was the trouble?—A. No, sir.

Q. Didn't you ask a man right near the corner of D Company barracks what the trouble was?—A. No, sir.

Counsel for the accused:

One moment; what is the purpose of this? Is it the purpose to lay the foundation to contradict the witness on that point? Otherwise it is absolutely irrelevant.

Q. Did you meet anybody that night?—A. Nobody but Major Penrose.

Q. Did you meet any men before you saw Major Penrose that night? You are sure Major Penrose is the first one you talked to?

Counsel for the accused:

Let him answer the question.

A. I don't remember having seen anybody else.

Q. And you were at work on this rear when Major Penrose sent for you, were you?—A. Yes, sir.

Q. You had just gone back there, cleaning out——

Counsel for the accused:

We want to interpose another objection. There is not a scintilla of evidence that Major Penrose sent for him. It is decidedly objectionable, and we ask the court to instruct counsel to confine himself, if he is going to quote the record, to that particular part of the evidence that is correct. The witness hasn't said that Major Penrose sent for him, and, may it please the court, if he brings it out on cross-examination that Major Penrose sent for him, that is all right; but to assume that Major Penrose sent for him is not cross-examination, and is objectionable.

The presiding officer:

The associate counsel, when he is in doubt, will ask to have it read on any point. I think we can avoid these frequent interruptions if counsel will confine himself to what the record says. That is all that is necessary. We will proceed with the trial.

Assistant judge-advocate:

May I request that the last question be read to the court and to the witness again?

Counsel for the accused:

I challenge the record that it is not in the record that Major Penrose sent for him. Here is a man speaking a foreign tongue, and questions are being thrown at him two or three at a time, and it will naturally confuse him. We are perfectly willing that these questions may be asked if they don't misquote the record.

Q. Were you working at the rear when you saw Major Penrose?—A. Yes, sir.

Q. How did you happen to see him?—A. He was coming across the road with a sentry.

Q. And did he call to you or not?—A. He walked up to me where I was.

Q. And you were at this time at work at the rear?—A. Yes, sir.

Q. And you hadn't talked to anybody in the meantime?—A. Not before that; no, sir.

Q. You didn't know what this trouble was, then—whether the soldiers were doing this shooting or the townspeople?—A. No, sir.

Q. And didn't feel interested in the matter at all?—A. No, sir.

Q. When there is a fire in Brownsville, do you ever go to them—when a house burns up?—A. Sometimes I do; yes, sir.

Q. If one burned right on the edge of the reservation or in the post, would you go to that?—A. Yes, sir.

Q. And if you heard a lot of shooting?—A. I won't go to that.

Q. You don't want to find out what it is about?—A. No, sir.

Q. You don't want to ask about it of anybody?—A. I don't know; maybe next morning, if I feel like it.

Q. But you didn't want to talk about it that night?—A. No, sir.

Q. When did you hear the bugle call?—A. As soon as I jumped in my cart to drive away from there; that is the first time I heard the bugle call. That is the time the first bugle call went.

Q. That was before you left the ash can; you heard a bugle then?—A. That is, after I left the ash can.

Q. Explain that, please.—A. As I heard these shots going into the post I jumped on my cart and tried to get away from there, and as soon as I jumped on my cart I heard the first bugle call, and then right after that I heard the rest of the bugles at the barracks.

Q. That was only about——A. That was while the shooting was taking place in town.

Q. You stated about two minutes after the first, I believe?—A. No, sir.

Q. How long was it after the first shot that you heard the bugle?—A. It must have been about a couple of minutes or more.

Q. You are sure it wasn't three minutes?—A. I don't know.

Q. You had just gotten on your cart there at the ash can?—A. Yes, sir.

Q. And started to walk away slowly——A. Yes, sir.

Q. Or rapidly; which was it?—A. I started to walk pretty fast.

Q. Did you or not tell Mr. Purdy that the shooting must have been some 45 yards from where you were standing?—A. I think I said 45 yards from the wall.

Q. You think you said 45 yards from the wall?—A. Yes, sir. That is a very plain error, because it is more than that, I know.

Q. So you would like to change that now and make it farther off, would you?—A. Yes, sir.

Q. When you were examined by Mr. Purdy and asked with reference to this first shot or the first shots, you were asked, "Were they near Mr. Cowen's house;" you answered, "I don't know; they were in that direction, though."—A. Yes, sir.

Q. And to-day you point it out as being right there in the alley by the Cowen house, and when you testified the next morning you said the first shot was just outside the wall?

Counsel for the accused:

Once more I make the point that the witness did say it was right by the Cowen house; it is in evidence, and the witness did point way back toward the alley.

Q. You did your work just as usual that night, did you?—A. Yes, sir.

Q. And the mere fact that there were a number of shots fired didn't interrupt your work at all?—A. No, sir.

Q. And you did everything that you ought to have done, did you?—A. Yes, sir; everything.

Q. By the way, when you were standing there right near the corner of B Company barracks, near this ash can, and the first shots were fired, did you hear a call out?—A. No, sir.

Q. Was any expression like "black son-of-a-bitches" used?—A. No, sir.

Q. Did you hear anybody say "I want all of you?"

Counsel for the accused:

I think we will have to object to that. This is not proper cross-examination.

Q. Did you hear anybody call out at all?—A. No, sir.

Q. So you didn't hear any voice at all?—A. No, sir.

Q. No yelling?—A. No, sir.

Q. And you stayed there about two minutes?—A. Yes, sir.

Q. And there was no yelling at all—just these shots?—A. No, sir; no yelling at all.

Q. Did you hear any shots right near the gate—the garrison gate?—A. No, sir.

Q. So you heard no voice yelling out, and the only shots you heard were over in the direction you have told us about?—A. Yes, sir; that is all.

Q. And after you left there and were going at a walk toward the administration building, and then stopped for a few seconds in front of D Company barracks, you didn't hear that voice then?—A. Yes, sir; I heard some voices there saying "Get up"—waking each other.

Q. But you didn't hear anybody out near the gate calling out things in a loud tone of voice?—A. No, sir.

Q. You didn't make any inquiries of anybody as to what had happened from the time the shooting began until Major Penrose talked to you?—A. No, sir.

Q. You had no interest in that?—A. No, sir.

Q. Did you see any other soldiers, aside from that sentry, that night when the shooting first started?—A. Yes, sir; I saw the soldiers of D Company when I passed by.

Q. Just prior to the shooting, did you see anybody else, aside from that sentry, Private Howard?—A. No, sir.

Q. You blew your lantern out right after which shot? You stated the first shot one time and the third shot another time.—A. I couldn't very well tell you; I don't remember. All I remember is I blowed my lantern out when I heard the first shots. I couldn't tell you whether it was the first shot or not.

Q. So a few moments ago, when you said you were absolutely certain it was after the third shot, you wasn't absolutely certain?—A. It must have been after the second shot when I blowed out my lantern.

Q. You are sure about that, after thinking it over carefully, that it was after the second shot?—A. Yes, sir.

Q. And you heard this bugle just as you got on your cart to drive away?—A. Yes, sir.

Q. And that was two minutes after this first shot or second shot?—A. Yes, sir; about two minutes.

Q. So, if you stated before to Mr. Purdy with reference to the bugle call in reply to a question, "It was sounded inside the post, inside the house?—A. I don't know whether inside or outside. I had just blowed my lantern out. I was afraid they might see me and shoot me or shoot at my lantern and hit me." Is that so? Had you just blown your lantern out when you heard this bugle?—A. Yes, sir; I had just blown my lantern out.

Q. Just that minute?—A. No, not that minute; just a few seconds before.

Q. As soon as this bugle sounded did all the rest of the bugles start up or not?—A. Yes, sir.

Q. Right away?—A. Yes, sir.

Q. You were, then, I suppose, moving at a walk between the ash can and the front of D Company barracks?—A. Yes, sir.

Q. Where was the point you stopped in front of D Company barracks? Indicate it on the map.—A. (Witness goes to map.) This is the road here (indicating the road between D and B Company barracks); I stopped right here (following the road to a point opposite the center of D Company barracks).

Q. That was the point where you stopped?—A. Right here; just a few seconds.

Q. Then you drove on to what point?—A. I stopped right here (indicating and following the road in a southerly direction to a point opposite the administration building). This is the sidewalk here.

Q. You stopped right by the sidewalk, did you?—A. In the road.

Q. After you drove away from that point, where did you go? Indicate on the map.—A. I turned around this way here and come back here and took this road back of D Company. This is the road I used to take every night (indicating a point just west of D Company barracks, thence passing easterly in rear of the barracks to a point near the garrison wall opposite the center of the northern face of D Company barracks).

Q. Did you see any soldiers along the wall then?—A. Yes, sir.

Q. Were there any soldiers near this rear you were cleaning out?—A. Right behind the rear there was a good many of them.

Q. How close to the rear?—A. The rear is 2 feet or 2½ feet from the wall.

Q. And these soldiers were right along the wall?—A. Yes, sir.

Q. And how close was your cart to these soldiers when you stopped? A. About 16 feet.

Q. And yet you didn't ask these soldiers anything about what this trouble was?—A. No, sir.

Q. You didn't ask them anything at all?—A. No, sir.

Q. You are positive about that?—A. Yes, sir.

Q. And you didn't feel interested at all in what had happened?—A. No, sir.

Q. Now, you are sure you didn't gallop your mule at all that night?—A. No, sir; I didn't gallop him, but just went at a fast walk; that was all.

Q. Are you accustomed, when you are making your rounds, cleaning out the rears, to doing your work right straight along without

interruption; finish it and then go home and go to bed?—A. Yes, sir; every night.

Q. You don't loaf at your work?—A. No, sir.

Q. How long do you suppose you were getting that drink in B Company barracks that night?—A. Just a few seconds. I had my lantern with me when I went in B Company barracks.

Q. And come right out again?—A. Yes, sir.

Q. Were you in there as long as half a minute?—A. Just about half a minute—not quite.

Q. And that was a couple of minutes before the first shot was fired?—A. Yes, sir. As soon as I got back from getting my drink of water I jumped on my cart and drove away from there and went across the road and stopped at the kitchen to pick up this ash can.

Q. So, at the time you got the drink your cart was standing in front of the rear of B Companv—that is, near the sink of B Company?—A. Yes, sir.

Counsel for the accused:

I beg your pardon, there is another case of misquoting what the witness said; it comes so often that I must object to it.

The presiding officer:

The assistant judge-advocate will please confine himself to the record. If he can not remember the record, he can have it read.

The assistant judge-advocate:

That was my recollection of the record, may it please the court.

Q. Where was your cart at the time you went to get the drink of water?—A. In front of B Company sink.

Q. So, after you got a drink of water you went back to your cart right near the sink of B Company?—A. Yes, sir.

Counsel for the accused:

Now, may it please the court, I am going to simply ask, for the purpose of cutting down the record, the court to pass upon this one point. This has been gone over I think the fourth time—I am sure the third time—and it is simply encumbering the record. We grant the right to counsel to go back to that question and approach it from several standpoints, but when the witness has covered it once or twice in his cross-examination we submit that it is entirely unnecessary, serves no purpose, and is not a custom that is recognized before any court. We don't want to go on record as restricting this examination in any way, but we submit that to have the same thing gone over and over is not proper, and we will ask the court to rule on that. There is no desire on our part to object to his approaching the particular point which he desires from many directions, but to have the same thing gone over and over is not proper.

The judge-advocate:

Before the court rules on that question I should request, on behalf of the prosecution, that the cross-examination by the defense—to be more specific—of one Dominguez be examined by the court and ascertain whether we are but following in the footsteps of the example set by counsel in the early days of this trial.

Counsel for the accused:

I have no objection to approaching this question from any point as long as it will change it, but when it has been testified to the same point a number of times it will only encumber the record, and that is my only reason for objecting. I have no objection to going into it.

The accused, his counsel, the judge-advocates, the witness, and the reporter then withdrew, and the court was closed, and, on being opened, the presiding officer stated, in their presence, as follows:

I am instructed by the court to state that the court does not consider it necessary to instruct the counsel as requested by the defense.

Q. Was anyone present when you got this drink?—A. No, sir.

Q. Where did you get it—in the kitchen of Company B or where?—A. At Company B, right where they wash their faces and hands there is a water cooler, and in front of that.

Q. You didn't see anybody at all then?—A. No, sir.

Q. And during all this time you were at B Company—rather during this ten minutes, and there during the time you got this drink and was emptying the garbage can, and until you got up in front of D Company barracks you didn't see any people at all?—A. No one but the sentry; that is all.

Q. And you couldn't distinguish any forms of people out in the road?—A. No, sir; only the soldiers that were coming out of D Company barracks.

Q. That was after the shooting?—A. That was while the shooting was going on.

Q. Could you see these soldiers coming down stairs and forming in front of D Company?—A. Yes, sir.

Q. How far were you from them at that time?—A. I was about 20 feet away from them on the road.

Q. Now, what kind of fire was this—revolver fire, or shotgun fire, or rifle fire? Could you distinguish it?—A. No, sir.

Q. Have you ever been on the target range?—A. No, sir.

Q. You never have heard the Springfield rifle fired?—A. Yes, sir; I have heard them fired lots of times.

Q. Did any of these shots sound like Springfield rifles?—A. I couldn't tell you, because I don't know; I am not an expert.

Q. But you have heard them fired lots of times?—A. Yes, sir.

Q. You have heard a .45 six-shooter fired lots of times?—A. Yes, sir.

Q. Which did this firing sound like, a six-shooter or the Springfield rifle?—A. I think it must have been rifle shots, but I couldn't tell you whether it was Springfield or Winchester or what kind, but I know it sounded to me like carbine shots.

Q. Did you hear the sentinel fire his piece that night?—A. No, sir.

Q. You didn't hear them give the alarm?—A. No, sir.

REDIRECT EXAMINATION.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. In connection with that question about being 45 yards from where you were standing, I will ask if you didn't testify as follows: "Q. Did you have a light of any kind?—A. Yes, sir; one of these dash lanterns. Has a bull's-eye; gives a good light, like a searchlight." That is before Mr. Purdy. Did you so testify?—A. Yes, sir.

Q. "Q. While you were there at work emptying that ash can?—A. Yes, sir." Did you so testify before Mr. Purdy?—A. Yes, sir.

Q. "Q. Did you hear any firing?—A. Yes, sir; I heard one shot, and after that I heard the rest." Is that correct?—A. Yes, sir.

Q. "Q. In what direction did you hear that shooting?—A. In the direction of Yturria's." Is that correct?—A. Yes, sir.

Q. "Q. Do you know whether those shots were inside or outside the wall?—A. I think they were outside." That is correct?—A. Yes, sir.

Q. "Q. Do you know?—A. I think they were; if they had been inside I could have seen the men." Is that correct?—A. Yes, sir.

Q. "Q. Did you look that way?—A. Yes, sir." Is that correct?—A. Yes, sir.

Q. "Q. What did you see?—A. Nothing." Is that correct?—A. Yes, sir.

Q. "Q. No men?—A. No; everything was quiet." Is that correct?—A. Yes, sir.

Q. "Q. Where were the shots fired?—A. From the outside of the wall. Q. How near?—A. I can't tell; they must have been 45 yards from where I was standing toward Mr. Cowen's alley." Did you testify that way?—A. Yes, sir; I think it must be more than that.

Q. "Q. You know where the alley is located up to Mr. Cowen's house?—A. Yes, sir." Is that correct?—A. Yes, sir.

Q. "Q. Were the shots near that wall or that alley?—A. I don't think they were so near the wall." Is that correct?—A. Yes, sir.

Q. "Q. Were they near Mr. Cowen's house?—A. I don't know; they were in that direction, though." Is that correct?—A. Yes, sir.

Q. Is that all of your testimony as you gave it before Mr. Purdy on that point?—A. Yes, sir.

Q. Now, in regard to the testimony that has been read to you about the movement of the cart: "Q. What did you do then?—A. I got away as quick as I could get on my cart and drive off." Is that correct?—A. Yes, sir.

Q. "Q. Where did you drive?—A. I drove opposite D Company and from there to the administration building." Is that correct?—A. Yes, sir.

Q. "Q. Were you frightened?—A. Yes, sir. Q. Badly?—A. No; not very. Q. Did you expect to be shot?—A. Yes, sir." Is that correct? Those three answers.—A. Yes, sir.

Q. "Q. You do not know who did the shooting?—A. No, sir." Is that correct?—A. Yes, sir.

Q. "Q. Did you hear any voices?—A. No, sir." Is that correct?—A. Yes, sir.

Q. Now, in regard to the bugle call; the question was: "Did you hear the bugle?—A. Yes, sir. Q. Who sounded it?—A. I don't know, sir." Is that correct?—A. Yes, sir.

Q. "Q. It was sounded inside the post; inside the house?—A. I don't know whether inside or outside; I had just blowed my lantern out. I was afraid they might see me and shoot me or shoot at my lantern and hit me." Is that correct?—A. Yes, sir.

Q. "Q. But you could not see the bugler?—A. No, sir. Q. You don't know whether he was inside or outside?—A. No, sir." Is that correct?—A. Yes, sir.

Q. "Q. Do you know whether he was to the east or the west of the main gate?—A. The sound seemed to me that it come from the east of the main gate, but as soon as this bugle sounded all the rest of the bugles blowed the same as if they had a fire drill." Is that correct?—A. Yes, sir.

The assistant judge-advocate:

May it please the court, while the reading of previous statements or the giving of previous inconsistent statements is all right on the part of the party not calling the witness for the purpose of testing his credibility or bringing out the fact that he had at previous times made statements inconsistent or directly opposite to what he is testifying to on the stand, is perfectly legitimate and a well-known means of questioning a witness's credibility, but it seems to me that for a party whose witness is already on the stand to read to him extracts from previous statements and merely ask him whether they are correct or not is a form of examination that is not regularly permitted on either direct examination or on redirect examination. While in the latter it is perfectly proper to clear up any points and ask a witness to explain himself more fully on questions to which he has been compelled to answer "Yes" or "No" on the cross-examination, nevertheless the introduction of other statements upon which he hasn't been cross-examined, and bring out his evidence in that manner, is not in accordance with either the civil law or the ordinary customs of military procedure, it seems to me. I may be mistaken, but I wish to object to it at this point.

Counsel for the accused:

We would request that the counsel support his statement by any citation of law.

The accused, his counsel, the judge-advocates, the witness, and the reporter then withdrew, and the court was closed, and, on being opened, the presiding officer inquired of the assistant judge-advocate if he was ready to produce his authorities.

Assistant judge-advocate:

Does the court wish me to read the law on the question? Under the heading "Cross-examination," on page 337, of McKelvey on Evidence, Article 24, states in black-letter text, as follows: (Here counsel read Article 24, as stated above). I can find nothing here under the head of reexamination that authorizes the introduction of matter to which he has either sworn previously or statements that he has made previously on the redirect no more than on the direct examination. (Counsel continues reading on page 338, McKelvey on Evidence, in the fine-letter text "Where the State," etc.) Under the head of reexamination there is nothing that I can find that makes it possible for statements to be introduced in that manner. (Here counsel reads from page 340 of McKelvey on Evidence, beginning with the words "That the sole object of reexamination," etc.) On page 345, under the heading "The best-evidence rule." (Here counsel reads.) And it does apply in the case of the direct and redirect examination in this case. That is the only authority I have looked up, sir. I would like to state that it seems to me that on redirect examination there is no more reason why testimony should be presented by the defense in this manner than on the direct examination. It is not the best evidence and should not therefore be admitted.

Counsel for the accused:

I am still waiting to hear any law bearing on his objection. I haven't heard any yet.

The accused, his counsel, the judge-advocates, the witness, and the reporter then withdrew, and the court was closed, and, on being opened, the presiding officer announced, in their presence, as follows:

I am instructed by the court to announce that the objection is sustained.

Counsel for the accused:

Now, may it please the court, we raise this question and ask for a ruling, when a counsel on one side, on cross-examination, goes into a previous examination, under oath, and gives only a partial account of it and cross-examines the witness on it, can not we, under the rules of redirect examination, show what this statement was in connection with the context so as to clear up what has been garbled. That is our position. We now ask the court to rule on that, stating that that was our purpose, and we cite the record on that and particularly with regard to the one that has been read and in this instance this witness was not read the entire part of the text of the original examination nor was he read an entire sentence; it was only a clause or part of the answer. We ask for a ruling of the court on that particular question, and, if the court desires, we will cite our authorities.

The judge-advocate:

I understand the question has been asked of the court; we have nothing to add to the question of counsel.

(The reporter here read the request of counsel for a ruling of the court.)

The presiding officer:

Will you please give us that part of the text to which you refer?

Counsel for the accused:

In regard to the distance of 45 yards; that is one that I recall specifically.

Assistant judge-advocate:

May it please the court, when a witness is asked if he hasn't made certain previous inconsistent statements it is not necessary to go into the details of the entire conversation or to quote the entire affidavit in case that be the basis of this cross-examination; it is merely necessary to quote points on which he has contradicted himself and ask him whether he made them or not; later, in case he denies making them, we can introduce them as evidence and prove that he made them, but it is not necessary to read question after question, though he can be asked the circumstances under which they were taken and give any explanation that he can to show why he made the mistake. To introduce question after question and answer after answer in the form which the defense just started in to introduce it is not good military procedure.

Counsel for the accused:

I regret to say that on hearing my remarks read that they were not as clear as I would like to have them. We now state our purpose to be to clear up certain things gone into by the prosecution on cross-examination, and we claim the right to show exactly what this witness did testify to at that particular time, showing the context of the different statements so as to clear up anything that the cross-examiner may have left, to our mind, clouded or uncertain, and this refers particularly to the cases where only a garbled citation of that evidence is taken advantage of.

Assistant judge-advocate:

Does the counsel intend the court to understand——

Counsel for the accused:

Or, if the word "garbled" is objected to, I have in my mind more specifically an incomplete statement of the evidence, and we ask for a ruling on that point, and that is our purpose here.

The accused, his counsel, the judge-advocates, the witness, and the reporter then withdrew, and the court was closed, and, on being opened, the presiding officer stated, in their presence, as follows:

I am instructed by the court to announce the decision that the reexamination is expected to confine itself to clearing up what was rendered obscure or left uncertain by cross-examination, but will not exceed this limitation. Counsel may specify particular points which he wishes cleared up and reexamine the witness on those points.

Counsel for the accused:

Do I understand the court to impose the rule now that before I ask the question I must state to the court—because as it reads that is my understanding of it—first what I am going to clear up?

The presiding officer:

Counsel may specify particular points which he wishes cleared up and reexamine the witness on those points only.

THE PENROSE COURT-MARTIAL—Continued.

PART 6.

MARCH 9, 11, AND 12, 1907.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., March 9, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocates. The accused, his counsels, and the reporter were also present.

The reading of the proceedings of March 8 was dispensed with.

Upon request of a member of the court the accused, his counsels, the witness, the judge-advocates, and the reporter withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

The court desires that all connected with the court will be present promptly at the hour set for convening. I am instructed also by the court to announce further, in order to clear up any possible doubt that might exist in the minds of counsel in regard to the ruling yesterday, that counsel has the right to clear up anything which has been cast in doubt by cross-examination; hence he has the right to ask witness as to former testimony before Purdy or other investigations, in so far as it tends to clear up cross-examination as rendered uncertain.

MATIAS TAMAYO, witness for the defense, then continued his testimony.

EXAMINATION BY THE COURT.

Q. Did you change your mind during the firing, as to its cause, or not?—A. About what?

Q. That is, with reference to where it came from; that is, what did you think it—a disturbance, a fire, or riot, or what?—A. After I heard all the rest of the shooting I thought it was a disturbance in town.

Q. When you were emptying the sink in rear of the administration building, did you still think the firing was on account of a fire in town?—A. No, sir; I thought there was some kind of a disturbance going on.

Q. State why you blew your lantern out after the second shot if you thought it was a fire alarm in town?—A. Well, sir, I usually use to do it whenever I used to hear shooting. I always—it is better to blow a lantern out.

Q. Did you see or hear any shots fired from the porches of the barracks?—A. No, sir.

Q. The court explains that this means while you were in rear of the barracks.—A. No, sir.

Q. When you were behind that tree at the administration building, how many bullets, if any, did you hear passing above you?—A. About two or three more bullets.

Q. How long a time did you hear bullets in the air—until you were at what place?—A. When I left the corner of B Company's barracks I heard a few shots coming into the post, and then I heard some more while I was behind the tree.

Q. Did you hear any sound in the barracks as if someone was striking blows with an ax when you were near there, just before the shooting?—A. No, sir.

Q. Have you understood all the English words of all the questions asked you?—A. Yes, sir.

Q. Did you notice or hear any group of men inside the fort at any place while you were getting garbage, before you heard the shooting?—A. No, sir.

Counsel for accused here addressed the court as follows:

I would like to state to the court that we have a witness here for whom we telegraphed two or three days ago, who was Corporal Wheeler. He came into the court room shortly after 10 o'clock, and that was the first time I have seen him, and I never have, unless forced to do it, heretofore put a witness on the stand without at least looking him over and seeing what he is going to say. If we could have fifteen or twenty minutes, perhaps we would be ready to go right along. I think fifteen or twenty minutes' recess might enable me to go right along; I know it would save time of the court in the presentation of the witness; however, if the court directs I will put him on and stumble through the examination.

By the president of the court:

Has the counsel any other witnesses?

By counsel:

We have one witness whom we are ready to introduce.

By the president of the court:

The court will now take a recess to enable the counsel to prepare his witness.

The court then took a recess until 11.15 o'clock a. m., at which hour the members of the court, the accused, his counsels, the reporter, and the judge-advocates resumed their seats.

SAMUEL WHEELER, a witness for the defense, was duly sworn and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please state your name, residence, and present occupation.—A. Samuel Wheeler is my name; I live at No. 702 Choctaw avenue, El Reno, Okla., and I work for the Traders' Compress Company, El Reno, Okla.

Q. Do you know the accused? If so, state who he is.—A. Yes, sir; Major Penrose, sir.

QUESTIONS BY THE ACCUSED.

Q. Have you been a soldier?—A. Yes, sir.

Q. What service have you had; in what regiments?—A. I served in the Ninth Cavalry, my first enlistment; then in the Tenth Cavalry five years, and back to the Ninth Cavalry and served three years, and come to the Twenty-fifth Infantry and served nearly six years, lacking a couple of days, I think.

Q. Were you a noncommissioned officer in your last enlistment of the Twenty-fifth Infantry?—A. Yes, sir.

Q. Were you discharged as a noncommissioned officer?—A. No, sir.

Q. How were you discharged?—A. As a private, sir; without honor.

Q. Without honor, as a private?—A. Yes, sir.

Q. Whereabouts?—A. At Fort Reno, Oklahoma Territory.

Q. Why were you discharged as a private?—A. I had some trouble, committing an assault on a man—Cook Williams, of my company—a few days before I was discharged, and I was tried and reduced to the ranks, to the grade of private.

Q. What is your total length of service from the time you first joined the Ninth Cavalry until you were discharged without honor at Fort Reno?—A. About eighteen years and eleven months and about twenty-nine days.

Q. Were you stationed at Fort Brown, in the city of Brownsville, last year at any time?—A. Yes, sir.

Q. When were you there?—A. We were there in August.

Q. You were there on the 13th and 14th of August?—A. Yes, sir.

Q. What duty were you on the 13th of August?—A. I were on guard, sir.

Q. What relief did you have?—A. First relief.

Q. And your relief was on post at what time of night, Corporal?—A. We went on at 10.30—10.30 to 12.30.

Q. You were, then, corporal of the guard in charge of the first relief that night?—A. Yes, sir.

Q. How many on each relief, Corporal?—A. Four privates, one corporal, in each relief.

Q. Who was commander of the guard that night?—A. Sergeant Reid, of B Company.

Q. Tell the court who was on each post that night on your relief.—A. Private Benjamin Johnson, Company D, was No. 1, first relief; Joseph H. Howard, D Company, I think, No. 2 of my relief; Private Hairston, of B Company, was No. 3, and Alexander Ash, of D Company, No. 4, sir.

Q. Did you, as corporal in charge of a relief that day, receive any especial orders of an unusual nature?—A. That evening; yes, sir.

Q. What were they? First, who gave you these orders?—A. The officer of the day.

Q. State to the court what they were.—A. My orders, I received from the officer of the day between 7 and 8 o'clock, was to take my relief and make a patrol out in town, up through the Tenderloin district, was the way the officer of the day gave it to me, and order all soldiers in, and on return those who did not come in I was to bring them in. I notified everybody out, around the saloons and up to the dance hall, and everybody had turned in when I came back; I didn't have anyone to arrest. I came in and reported the results to the officer of the day.

Q. Did you have any other instructions, as corporal in charge of a relief, on this same night in this connection?—A. When I posted my relief at 10.30 the commander of the guard told me to instruct the sentries to allow no one out, with pass or without.

Q. By that you understood that he meant any members of the garrison?—A. Members of the garrison, to be out.

Q. Did you give such instructions to the several members of your relief?—A. I did to No. 2 and No. 4. I didn't say anything to No. 3, because he was around on the water edge, and no one was going out that way.

Q. Couldn't get out?—A. Couldn't get out that way, anyhow.

Q. But Nos. 2 and 4—Privates Howard and Ash—you gave that order to?—A. Yes, sir.

Q. About what time was it you went out with the members of your relief to make a patrol?—A. I don't know just the time. I thought probably it was about 7 o'clock. The officer of the day came and had the guard formed and had my relief step right out and make the patrol. I never looked at the time.

Q. Did you receive your instructions from the officer of the day in person?—A. I did for the patrol.

Q. Who did you report to the result of your patrol when you came back?—A. The officer of the day.

Q. And where was the officer of the day at that time?—A. At the guardhouse.

Q. Did you, when you came back, have any conversation with the officer of the day in regard to this patrol?—A. Yes, sir.

Q. Did anything unusual occur, Corporal, while you were on watch—while your relief was on post—that night?—A. Why, yes, sir.

Q. What was it?—A. This shooting taken place; that was unusual.

Q. The shooting took place and that was unusual?—A. Yes, sir.

Q. (Handing witness plat of the guardhouse, copy of which is hereto appended and marked). Which is the sergeant of the guard's room—the commander of the guard?—A. As I understand, this is the front of the building here (indicating part marked "Figure 1"). This could be the sergeant of the guard's room (indicating part marked "Figure 2").

Q. What is the room opposite?—A. That is where members of the guard stay—the privates (indicating part marked "Figure 3").

Q. And this place in back—that is an open place, is it?—A. In here; yes, sir. (Marked "4.")

Q. And what is this place here?—A. This is the prison room. These are prison rooms back here.

Q. That's cells, isn't it?—A. Yes, sir; these are cells. The hallway down here and the cells to the right and left.

Q. And the prison room is back here?—A. Yes, sir; large room back there (indicating part marked "Figure 5").

Q. This in front marked "No. 1" is an open shed or porch?—A. Yes, sir.

Q. Is that where the guard forms, usually?—A. They form right here; in wet weather usually under the shed; usually right here in front (indicating point in front of No. 2 and in front of porch).

Q. Who slept in this room marked No. 2; the commander of the guardroom?—A. The two corporals over there and the musician of the guard and the commander of the guard.

Q. So that in that same room with you were the noncommissioned officers and musician of the guard and the corporal on watch?—A. Yes, sir.

Q. Did the enlisted men actually sleep in No. 3, or where did they sleep?—A. They slept here in this open place (indicating between rooms 1 and 2).

Q. Why did they sleep out there, Corporal?—A. On account of the heat. It was so warm down there, and the heat is so bad, and the mosquitoes. We never let them smoke in the guardhouse, so they would move out here where they could smoke to keep the mosquitoes off.

Q. At the time of this shooting who was in the room there with you at that time?—A. The noncommissioned officers and the musician.

Q. They were all in there, were they?—A. Yes, sir.

Q. Sergeant Reid there?—A. Yes, sir.

Q. What was he doing?—A. Lying on the bunk there.

Q. What was the first shot you heard, Corporal?—A. I heard two shots—the first two shots.

Q. Do you know the general direction that they came from?—A. They came from over in kind of this direction—that is, the guardhouse is here—I will turn around—I was sitting like this looking at the clock, and the sound of these shots came right in here—a sharp sound right off in that direction (indicating with left arm).

Q. That would be off toward the back of the hospital, then—general direction of the back of the hospital?—A. No, sir; that would not be the back of the hospital.

Q. He is sitting in room No. 1, and sitting with his back toward the door?—A. Yes, sir; toward the parade ground.

(Witness explains that he was sitting in room marked "2," facing toward the rear wall of the guardhouse—toward "A"—and the shots came from his left, which would be east of north, a general northerly direction—northeast, I should call it.) (This explanation made by counsel.)

By the judge-advocate:

If the witness understands the map I would like to have him explain it. That is not the idea I got from his testimony.

At this point counsel produced a plat of the guardhouse, large enough that the court might see it, and held it against map on wall, in position where guardhouse is.

By counsel:

This is, as we understand it, the guardhouse as put in the plat in the official Government report.

Q. As we understood the witness, he said he was facing toward this open space here; is that correct?—A. Yes, sir.

Q. With your back toward the door in which you come in?—A. Yes, sir.

Q. And the shots came from off to your left?—A. Yes, sir.

By assistant judge-advocate:

Indicating a general northerly direction.

By counsel:

Northeast direction, as I said before, as I understand it.

Q. Do you know exactly where that came from or are you simply giving a general direction as it struck you?—A. Just a general direction as it struck me. It came from that direction.

Q. Did you hear any further shots after that?—A. Yes, sir; I heard a number of shots immediately after those two shots.

Q. What was the general direction of those shots, as it appeared to you?—A. Down—way down in this part of the——

Q. Well, what?—A. I would not say whether it was west or south or east exactly, but I know it was——

Q. Can you give us anything connected with the locality you thought they came from, general direction? How would you describe it?—A. The shots sounded as though they were down near the gate, somewheres in that part of the town or the post; somewheres down as far as that anyhow.

Q. Is that the general direction of the ferry?—A. Yes, sir.

Q. About how long did this shooting keep up, as you recall it, Corporal?—A. It seems to me it kept up as much as fifteen or twenty minutes.

Q. What did you do, Corporal, when you heard this shooting?—A. I started in to alarm the guard, but they seemed—that the commander of the guard he got up about the same time I did and hollered, "Outside, guard," and he went out and formed the guard and I hustled the men outside.

Q. You didn't go out and take part in the formation yourself further than to hustle the men out?—A. That was all, sir; I was inside.

Q. And the guard was formed there by the commander of the guard at that time?—A. Yes, sir.

Q. Did he make any disposition of the guard about that time or shortly after? If so, what was it?—A. Well, he posted the men—distributed them around the guardhouse, different points around in front and on the inside in the sally port. At least he gave me two men to protect the guardhouse and ourselves as well.

Q. And you put those men on either side of the guardhouse, did you?—A. One on each side; yes, sir.

Q. Did anybody come to the guardhouse at this time—any member of the command?—A. Any members of the command?

Q. Yes.—A. Yes, sir; the sergeant-major came to the guardhouse right along through this firing—the latter part of it.

Q. Anybody else come there during this time?—A. Yes, sir; a couple of women and a child came there.

Q. Anybody else?—A. Yes, sir; the quartermaster clerk. He come there.

Q. Do you know what his name is?—A. I don't remember his name; no, sir.

Q. Who received this quartermaster clerk?—A. I did, sir.

Q. Did you have any conversation with him?—A. I did. A short conversation in a hurry there—a few brief words with him.

Q. Did you give him any instructions?—A. Why, yes, sir; I told him, I says, "There is something very peculiar going on around here and you are liable to get shot straggling in here this way, you had better go back to your quarters and stay." Then the commander of the guard heard me in conversation and he broke around to see what was the matter. I said, "Here's the quartermaster clerk here; I don't know what he wants," and I turned him over to Sergeant Reid, and what he did with him—I think he sent him back to his quarters—I went back to the guardhouse.

Q. Was there any alarm given by any member of the guard of your relief during this time or any part of it—any call or alarm?—A. Oh, yes, sir; during the firing No. 2 he called for the corporal of the guard and relief at No. 2.

Q. Did you respond to that call or not?—A. I did not; but the

commander of the guard sent Corporal Burdett, the next noncommissioned officer, up there and two privates—started them there.

Q. They went up to No. 2?—A. Yes, sir; he started them. I don't know whether they went there or not, but that's where he started them.

Q. Did these men come back right away?—A. No, sir. No, sir; they didn't come back.

Q. Did you leave the vicinity of the guardhouse yourself at all during this shooting?—A. No, sir; I never left the vicinity of the guardhouse till next morning. I went to fire the reveille gun.

Q. Did the sergeant of the guard leave the guardhouse during that firing?—A. Not during the firing, but immediately after the firing he went to look after this patrol he had sent to No. 2. They had been gone, and he sent one man along with him, so he could bring back the communication to the guardhouse, and we failed to get that, and the commander of the guard taken command and goes himself.

Q. How long did your relief remain on post, Sergeant, that night? Did you come off at the usual time, 12.30?—A. No, sir; it was about half past 3 or 4 o'clock in the morning before we could get off.

Q. Why were you not relieved before that?—A. The relief—we didn't have the men to spare, and had I brought in my relief they would have had to went on post around the guardhouse there anyhow, and we just considered we would keep what we had there and let the other men stay on post. They were all right; if they hadn't of been they would have given the alarm—call for the guard; they would have had to perform this duty anyhow, and the corporal of the second relief and two of his privates, they were out in the garrison some place on duty. We didn't have the men to spare; the guard was small; we didn't know what was going on or going to happen and we would just keep what we had there.

Q. Was your guard inspected the following morning in the usual way by anyone?—A. By the officer of the day; yes, sir.

Q. What time was that?—A. Reveille; I don't know just the hour, but it was in the morning.

Q. Was it the usual inspection that the officer of the day makes?—A. He made a very careful inspection.

Q. What do you mean by that?—A. By handling each individual piece—examining it. They usually open ranks, open and close chambers, pass down one rank, in through and up the other, close chambers, close ranks; but he didn't; he taken ample time and inspected each piece, man and ammunition.

Q. What time did you come off guard that next morning, Corporal?—A. It was awful late, sir; I don't know just the time we came off guard. There was a terrible uproar around there and when we were relieved from guard we were marched straight up to headquarters, to the commanding officer up there. I never noticed the time we did come off, but we didn't come off the time we should have, anyhow; it was late, and then the commanding officer——

Q. Were you held at the commanding officer's office, or what were you up there for; do you know?—A. For investigation and inspection; we was held there quite a while.

Q. Did the commanding officer himself interview you, or investigate you; or who did?—A. Me, the commanding officer; I think there was two officers there, but I went before the commanding officer myself.

Q. You know nothing about what happened to the other men at that time; you were taken in individually, each man by himself?—A. Yes, sir.

Q. Was there any other member of the guard before the commanding officer at the same time you were?—A. I think there was two of us; but I can't remember the other man.

Q. But the commanding officer himself interviewed you?—A. Yes, sir.

Q. Have you been investigated by other people about this?—A. Yes, sir.

Q. Who has investigated you?—A. Why—do you want to know everybody I have been before?

Q. Yes; you can tell who you have been before.—A. I don't believe I can tell now. Major—some major come to El Reno, then General Garlington.

Q. General Garlington came there?—A. Yes, sir.

Q. Was Colonel Lovering there?—A. Oh, yes, sir; Colonel Lovering.

Q. When you said major, you had him in mind?—A. Yes, sir; that's what I was trying to get at.

Q. When you went before Colonel Lovering, were you given an opportunity to tell everything you knew, or did you have any instructions about it?—A. I didn't consider I were given an opportunity to tell everything I knew, because he asked me to tell him what I knew. I thought about it, and began to tell him and then he said, "Never mind about some of these details," and then he begun asking me different questions, and said, "You just answer accordingly."

Q. Did General Garlington give you an opportunity to tell all you knew about it, or did you receive any instructions from him?—A. He didn't give me any opportunity, I wouldn't think. He came there and gave me the understanding that there was some shooting had been did at Brownsville and I knew something or other about it and I had to tell him about it. I wanted to tell him I didn't know anything about it and I wanted to tell him what I thought about it, and he said, "That is not the question; the matter has been carefully investigated by people in Washington——"

(Witness was here interrupted by the court and asked to speak louder, so that all could hear.)

The WITNESS. I would like to speak louder, I understand what you mean, and I would like to speak loud enough for everybody, but I never was a very loud talker and I am weak. I am kind of delicate; my lungs are weak. I throwed away my life for this military affair, laying around on the ground, and I am not very good.

Q. Go on and tell what General Garlington told you.—A. "You just answer these questions yes or no, and never mind about what anybody else did," and that's all. My questions were answered no, because the things he asked me I didn't know nothing about them.

Q. Have you answered every question that has been asked you to the best of your ability?—A. Yes, sir.

Q. Were you ever interviewed by Major Blocksom at Brownsville?—A. No, sir.

Q. Did you see him there?—A. Yes, sir.

Q. You are certain he never interviewed you?—A. Why, yes, sir.

Q. Corporal, during any part of this shooting you spoke of did you hear any bullets passing over the post?—A. Yes, sir.

Q. How many?—A. Quite a number; I didn't count them. At that time I instructed my No. 1 to quit walking post and lay down over in a dark spot by the guardhouse, and also the rest of the men standing around there.

Q. You had a light in the guardhouse, did you?—A. Yes, sir.

Q. Was this light burning brightly?—A. It were up to after this shooting began and then I kind of turned it down a little bit.

Q. And it was at that time that you posted No. 1 out from the reflection of the light, was it?—A. Along in through there; yes, sir.

Q. Corporal, tell the court where No. 2's post was.—A. No. 2's post was——

(Associate counsel took witness to map and explained locations to him of buildings, etc.)

A. This here is No. 2 post. All around through the day he walked from the corner of this building on this side, between the wall. We went from the guardhouse, right here, and posted him in here, and he walked up and down the walk. At night, after retreat, the post extends all around these barracks, and between them if it is necessary.

Q. How does he walk, with the buildings on his right or left?—A. Keeping the buildings to his left; and through the day he walked with the buildings to his right and left; walked up and down.

Q. Up and down on the road between——A. Between the wall and the quarters. As soon as the gun fires he begins walking around and around these buildings.

Q. At night?—A. At night; yes, sir.

Q. And No. 3 is around the officers' quarters?—A. Yes, sir; between the officers' quarters and that back quarter there through the day and at night around them and anywhere his service is necessary in there.

Q. What did those first two shots you heard sound like, Corporal? What did you take them to be?—A. I thought probably pistol shots—seemingly like somebody shooting a pistol.

Q. And what did these other shots seem to be that you said went on for a good while?—A. These came in pretty rapidly; seemed to me like they might have been shotguns and revolvers—a number of mixed shot. They weren't any one arm; they were different arm, because some was very loud and some not so loud, and sounded more like a black powder.

Q. I want to clear up a little more about these patrols. Do you know how many patrols were sent out that night?—A. Three; yes, sir; each corporal took out a patrol, one after the other.

Q. About when did those patrols cease; when was the last one that came in, about?—A. About 10 o'clock, I think.

Q. Are you sure about that?—A. Not sure; no, sir; because I didn't have it out.

Counsel here addressed the court as follows:

We would like to have the court take a recess; we are not prepared to go through with this, and my examination is going to be ragged. It is not fair to me and it is not fair to the court to take a man fifteen minutes after you first see him, and I would like to ask the court to take a recess.

The court then, at 12.15 o'clock p. m., adjourned to meet at 10 o'clock a. m., Monday morning, March 11, 1907.

CHAS. E. HAY, Jr.,
Captain, Acting Judge-Advocate, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., March 11, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocates. The accused, his counsels, and the reporter were also present.

The reading of the proceedings of March 9 was dispensed with.

SAMUEL WHEELER, witness for the defense, was reminded that he was still under oath.

DIRECT EXAMINATION CONTINUED.

Q. As I understood you Saturday, in your evidence you stated that when these first two shots were fired you were sitting in the guardhouse with your back toward the parade ground. Is that correct?—A. Yes, sir.

Q. And where did these shots come from, what direction?—A. They seemed to come right from the left, to my left as I sat in the guardhouse.

Q. Left and front you pointed, is that correct?—A. Yes, sir.

Q. Corporal, did you observe any feeling of resentment on the part of the Twenty-fifth Infantry against the people of Brownsville previous to August 13?—A. No, sir; I never noticed any particular feelings of the men between the people there in Brownsville.

Q. Did you personally know of any feeling of resentment or ill-will on the part of the people of Brownsville toward the soldiers previous to August 13?—A. No, sir; I weren't out amongst them myself to pay any attention to their actions at all.

Q. Did you hear of what is known as the Evans incident?—A. Yes, sir.

Q. When and how did that first come to your attention, your notice?—A. We first noticed it some time in the day. I don't remember just what time, but after I had mounted guard some one had a Brownsville paper there, and they saw this in there. It was passed around and read by first one and then the other of the guard.

Q. It was the paper of that day, was it, the 13th?—A. It must have been. I never noticed the date, but we were reading papers constantly there, and we never read anything like this before. It must have been the paper of that day.

Q. Did you have any conversation with the officer of the day about that incident?—A. Why, yes, sir.

Q. When was it?—A. That was some time in the evening, after I had made this patrol. I stepped aside and had kind of a private conversation with him; wanted to find out, gain some information why this action were being taken to get the men in so soon when everything was peaceful and quiet.

Q. Did you know where this Mrs. Evans lived?—A. Yes, sir.

Q. In what district of the city was it that she lived?—A. I could not say just what district, but she lived just outside the limits of the garrison, just across the road. I know very well where the place is.

Q. Did the officer of the day give you any instructions about this when you spoke to him about the incident itself?—A. Yes, sir.

Q. What did he tell you to do?—A. He told me to try to find out who these other parties were that lived in the house with Mrs. Evans.

Q. Did you find out?—A. I did, sir.

Q. Did you give him the list of those people?—A. Yes, sir.

Q. When these women came to the guardhouse that night during the firing, or about that time, what did they say?—A. I went out and received them and brought them into the guardhouse to find out why they came there. They said they came there for protection. Mrs. Jones said she was a soldier's wife and thought she had a right to come there, and that were the place for her to come for protection. I asked them in the noncommissioned officers' room and received them there, and she went on to a great extent crying and carrying on, and then I had her moved from there over to the hospital.

Q. Why did you send her to the hospital?—A. She said there was a member of her company in the hospital; if she could get where he was, she knew he would take care of her, because he was a particular friend of her husband's and her husband was away on the competition.

Q. Who was this man?—A. Bailey, she called him.

Q. What was he doing in the hospital?—A. He was sick in the hospital, a patient there.

Q. Did you see them again that night?—A. Yes, sir.

Q. How did that come about?—A. They were only at the guardhouse a short time before the hospital rang up the guardhouse to come over there and get some women and take them away from there.

Q. You mean they were only at the hospital a short time?—A. Yes, sir; and then the guard was rung up to come to get these women.

Q. And they were sent for or not?—A. We started a man for them and met them en route to the guardhouse, and this private brought them to the guardhouse, and then I sent them over to where there were some other women, for these women to take care of them and keep them there.

Q. That is over in what is known as the noncommissioned officers' row?—A. Yes, sir.

Q. You spoke of an alarm having been given by No. 2, and No. 2 was around the barracks that night?—A. Yes, sir.

Q. Was there any other sentinel gave an alarm while you were on post?—A. No, sir; not to my knowledge; we did not answer an alarm from any other sentry.

CROSS-EXAMINATION.

QUESTIONS BY THE ASSISTANT JUDGE-ADVOCATE.

Q. When were you appointed corporal in Company D, Twenty-fifth Infantry—approximately?—A. It was in October some time, I don't remember the date, 1902.

Q. Did you ever serve in Texas before the time you went to Brownsville?—A. No, sir.

Q. Your last station before that was Fort Niobrara, Nebr., was it not?—A. Yes, sir.

Q. How were the colored troops treated up there at Fort Niobrara?

By counsel for accused:

We object to that.

By assistant judge-advocate:

May it please the court, one of the essential points in the charges is that there was a feeling of resentment on the part of the men against the townspeople, and vice versa. It has been hard to show just what the feeling on the part of the men was from testimony to [of] civilians or of officers of the command; the only way we can show that feeling is to get the men themselves as they come on the stand and to examine them on that point; and the contrast between conditions at Fort Niobrara, Nebr., and Fort Brown, Tex., with regard to the manner in which the colored troops were treated is, it seems to me, decidedly pertinent and relevant, inasmuch as this contrast was so marked that it would naturally give rise to a feeling of resentment, and, may it please the court, if we can't cross-examine witnesses on this point, I don't see how the prosecution can bring it out. The defense has already asked what this feeling was; the witness has stated he didn't know of any, but, may it please the court, I think we can show by contrasting conditions that there must have been, as a logical result of the conditions, that such a feeling must have existed.

By counsel for accused:

May it please the court, there are two or three valid objections to this. In the first place, it wasn't gone into in the direct examination and is, therefore, not proper subject for cross-examination. In the second place, assuming that it is true and that his phase of it, that he attempts to claim is true—that there was a contrast between the feeling at the other place—the court is not authorized to draw an inference of what the feeling was at Brownsville from what the feeling was at Niobrara; they are not connected in any way. And, finally, and more important still, there is no charge about Niobrara at all, and therefore it is absolutely incompetent, irrelevant, and immaterial, and we object.

The accused, his counsels, the witness, the reporter, and the judge-advocates then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce the decision that the objection is not sustained, and the question will be answered.

By counsel for accused:

We would like an exception noted on the record to that.

(Question was then repeated to witness.)

A. In general very nicely, it seems to me.

Q. Was there any objection in the town of Valentine to colored troops drinking at the same bars with white men?—A. None to my knowledge, sir.

Q. You used to go into any of the saloons there and buy your drinks at the same bars, did you not?—A. We did, sir.

Q. What were the conditions at Brownsville in that respect?—A. I don't know, sir. I was only there a short time and did not have time to run around and never got out with the people.

Q. Did you never go into a saloon in Brownsville?—A. There was one Mexican I used to get to bring me a bottle of beer once in a while. I never went into any of the saloons that were originally there before I came. I think of a Sunday there was a saloon opened by a colored man named Elison, and I walked up there.

Q. That was on Sunday, the 12th of August?—A. Yes, sir.

Q. So that was the day before the shooting took place?—A. Yes, sir.

Q. Prior to that time you had never been to any saloons?—A. No, sir.

Q. Was Private Howard a member of your patrol when you made the patrol downtown on the evening of August 13?—A. Yes, sir.

Q. Was he with you all the time?—A. Yes, sir.

Q. All the time? Was he sent down to the ferry any time during the day?—A. Not to my knowledge; no, sir; he were not.

Q. So he never reported to you the fact that he had been insulted by townspeople on his way to or from the ferry that day?—A. No, sir.

Q. You are positive about that?—A. Yes, sir. I would like to have a word, sir; I don't think he could have gone to the ferry without my knowledge, because they never take a man out of a non-commissioned officer's relief unless they have him to do it himself, if he is present.

Q. Did the officer of the day tell you to take your relief and make this patrol through town?—A. He told me to take these two men of my relief and make a patrol through a certain part of the town.

Q. Were these two men with you all the time?—A. Yes, sir.

Q. Did you ever hear anything about a man named Adair having a gold pencil taken away from him at the ferry by customs officials?—A. No, sir.

Q. Did you ever hear anything about a man named Newton being knocked down on the sidewalk by a customs official named Tate?—A. I heard about him being knocked down by some gentleman of Brownsville, in the street. Yes, sir; I heard of it.

Q. That was pretty generally discussed among the men, wasn't it—that incident of his being knocked down?—A. I don't think so, sir, because I didn't hear anything about it until, I think, my captain asked me if I had heard anything about it; I told him I had not, because I hadn't.

Q. Did you ever hear anything about a couple of men named Harden and McGuire having trouble with a white man with reference to passing each other on the sidewalk?

By counsel for accused:

We would like to object to that. There is nothing in the evidence, nothing in the direct examination on it.

Q. You heard first about the Evans incident when you read this paper, did you, in the guardhouse?—A. Yes, sir.

Q. And you say you passed the paper around and everybody in the guardhouse read it?—A. I didn't say I passed it around.

Q. But it was passed around?—A. Yes, sir.

Q. And each man read that article?—A. I don't say each man; I wasn't watching to see who read it. I suppose so; it was read by me.

Q. And then you passed it to somebody else?—A. No, sir; I don't remember. We were sitting on a long bench in front of the guardhouse, and I don't know whether I passed it or laid it down on the bench.

Q. What comments were made?—A. I don't know of any particular comments made; I know I thought about it.

Q. Didn't you express yourself as to whether a soldier did it or not?—A. I did to the officer of the day, but I didn't at that time.

Q. You didn't say anything to any of the men?—A. No, sir.

Q. And this article stated, I believe, that Mrs. Evans claimed that she recognized her assailant as a colored man dressed in uniform; is that not so?—A. I think that is the first; yes, sir.

Q. And when you men read that there was no discussion as to the possibility or probability of its having been a colored soldier?—

A. There was none through me; there might have been amongst the rest of them.

Q. Didn't you hear any?—A. I didn't hear any.

Q. You stated in your direct examination that you had some conversation with the officer of the day in regard to this patrol; is that right?—A. No, sir; not in regards to the patrol.

Q. Didn't you have any conversation with the officer of the day with reference to the reasons for sending out this patrol, or for keeping the men in garrison?—A. That was afterwards.

Q. What was this? Explain the circumstances. What did you say and what did he say?—A. After I had performed my duty and reported the results to the officer of the day—he was standing to one side and I stepped over and asked permission to speak to him about this matter—he says, "All right, Corporal." I wanted to find out what were the trouble, that they were taking such peculiar steps here and everything being so peaceful and quiet amongst the men—everybody seemed to be sober—and he said: "That's true, because I have been out in town myself and I see everything is peaceful, and I think you made a good, clean sweep because I found no one behind you." I said "What's the trouble?" He said, "I don't know, the people seem to be trying to get us some trouble here; this Mrs. Evans has claimed that some man has committed an assault on her, and for such reason they seem to be giving us some trouble over the matter."

Q. Did he say anything further?—A. He might of. I said to him: "I don't think any of our men have did anything of this sort, and the matter you officers should take it up and investigate it," I said; "there are other people live at this house and you should go and inquire through them if anything of this sort happened around there." He said, "Who live there?" I said, "I don't know their name, but two more families live there." He said, "You try and find out who they are." I said, "Very well, sir." So I went to a servant girl who lives there——

Q. Just here I want to ask you, did you find out the names of these people? Did you go up there by yourself later on after this conversation, or did you go with other men?—A. Now, sir, I want to try to tell you about this.

Q. Did you go up there by yourself?—A. Up where?

Q. To the house.—A. I never went to the house. I have never been to the house.

Q. So you found out from somebody else?—A. I found it out from the servant employed at this house.

Q. What's her name?—A. Miss Viola Taylor.

Q. Was she a Mexican?—A. No, sir; her father was a colored man and her mother——

Q. She was a colored girl, was she?—A. Yes, sir.

Q. So, did you make an affidavit on the 24th day of November, 1906, at Fort Reno, before a notary public named E. J. Barbon? Did you make an affidavit on that date before that notary public?—A. I don't remember the date, but I made an affidavit there before a gentleman named Stewart.

Q. Gilchrist Stewart; was that his name?—A. I guess so; I don't know, sir.

Q. Did you tell him, or did you in this affidavit state, with reference to your conversation with the officer of the day as to the reason

for keeping the men in garrison after 8 o'clock, that the officer of the day replied: "People are trying, it seems, to give us some trouble. A lady has reported that she was insulted; that she was troubled by some of the soldiers; but we do not believe anything of the kind. I will see the commanding officer and have this matter thoroughly investigated to-morrow." Is that correct?—A. That is after I had give him the names of these people; you left that out; but the statement is about correct otherwise.

By president of the court:

I understood witness to say that this is the second conversation he had with the officer of the day. Is that correct—that you had two conversations with the officer of the day, one before you went and one after you returned?

By assistant judge-advocate:

May it please the court, I think that the witness had only one conversation with the officer of the day with reference to this matter, and that was after he came back with his patrol, and I merely am asking now about that same occasion.

By the president:

The answer did not seem clear to me. I wanted it cleared up.

A. In there, where he has it all, is when the officer of the day did not say anything about investigating this matter in the morning, until I had saw him the second time and gave him the names of these people. He folds it and put it in his pocket, and says, "I will see the commanding officer and investigate this matter in the morning."

Q. This statement I read to you is a true extract of your affidavit, is it not? I will show you your affidavit. (Shows witness affidavit referred to.)—A. Yes, sir.

Q. Now, how many men did you see downtown and send back to the barracks?—A. I couldn't say just how many; I might guess at it.

Q. Your best recollection.—A. I never went into the houses. There was some in a restaurant that was run by my wife; some in another restaurant run by Miss Taylor; some at a saloon uptown run by a colored man; there was a few at a place where they were going to have a dance. I went to the door of these places and give my orders, and then moved further on up through the district, and as I come back the houses were all vacated of soldiers, some in and some going in.

Q. About how many altogether do you think there were, to the best of your recollection; were there 5 altogether or 20?—A. About 30 altogether.

Q. That you told about this order?—A. I didn't tell them; I simply went to the door and published the order; I didn't tell them personally, and I give the people running the places to understand about the matter and kept on up the street, and when I came back I looked into these buildings and there were no soldiers in there.

Q. What were these orders you published?—A. The officer of the day instructed me to make this patrol up through the tenderloin district and inform all soldiers they must not be out in town later than 8 o'clock, with or without passes—must come in. I says, "I am going up the street, and all those who are not in or have not gone in I will arrest you and carry you in." He said, "Don't confine any men, but bring them to me."

Q. Do you remember the names of any of those men at all; were any in your company?—A. There might have been. I was not looking around taking any especial——

Q. Don't you remember a one?—A. No, sir.

Q. Not a man?—A. No, sir; I was hurriedly performing this duty.

Q. Did you have any conversation with any of these men with reference to the cause of this order?—A. For a minute. I would like to make another explanation here. I said I didn't remember any men, but that is wrong. There is one man I personally had a conversation with, because he was with a lady—a fellow by the name of Brown, Elmer Brown—and he was in this house, only himself and this lady. I remember him personally; he was in this house. I was a little too hasty saying I don't remember anybody, but I would like to correct that.

Q. Very good. What did you tell him?—A. Just to inform him he must come in.

Q. What did he say?—A. "All right, Corporal." So I left. There was a sort of shuttered door there, and I just hollered through the bars of this door; didn't go in.

Q. You told Elmer Brown he must be in by 8 o'clock——A. There was no one else to tell; he was the only one there.

Q. What duty was Elmer Brown on?—A. He seemed to be at leisure then; no duty at all.

Q. I mean in the company. Was he on extra or special duty?—A. He was at service at the commanding officer's quarters; I don't know how he was carried, on extra or special duty.

Q. Where did he sleep?—A. In B Company. You understand I don't say he slept in B Company; he belonged to B Company. I don't know where he slept.

Q. And you don't know whether he was on special duty or not?—A. No, sir; I don't know how he was carried.

Q. He is the only man you remember talking to?—A. Personally, yes, sir; he was the only man there.

Q. So you didn't have any opportunity of seeing how the men, as a whole, received this order; whether with resentment or not? You didn't have that opportunity of telling how the men received this order, whether they expressed resentment or feeling in the matter?—A. You mean to say I didn't have an opportunity to see?

Q. I say: You didn't have an opportunity to see that, if you merely gave this order and went on. You don't know what conversation they had afterwards?—A. I didn't wait to see; no, sir; my duty required me to make this round and report back. I didn't stop to see what they were talking about.

Q. Have you told the court everything that happened that night, to the best of your knowledge and belief?—A. That I know about?

Q. Yes.—A. I don't know, sir. All I have been asked I have told them, to the best of my knowledge, everything they have asked me about.

Q. At the time you heard those first two shots you stated you were in the guardhouse, seated, and looking at the clock; is that correct?—A. Yes, sir.

Q. Did you expect anything unusual to happen at a certain time that night?—A. No, sir.

Q. Why were you looking at the clock?—A. Because I came off at 12.30 and the time was growing very near, lacking a couple of minutes of time, to wake up the corporal to relieve me.

Q. What time was it when these shots were fired?—A. It was about

12.18 the last time I looked at the clock. I was going to wake the corporal up in about ten minutes, when I looked at the clock; I was reading also and looking at the clock, and the last time I looked it was eighteen minutes past 12.

Q. How long after was it you heard these two shots?—A. It weren't very long; I did not look at the clock at that time.

Q. Did you again look at the clock at the time the shooting was over?—A. No, sir.

Q. But you stated, to the best of your belief, the shooting lasted about fifteen or twenty minutes; is that correct?—A. Yes, sir.

Q. What interval was there between these first two shots and the general fusillade that opened up after that?—A. It appeared to me like about four or five seconds.

Q. So it followed almost immediately? That is, the fusillade followed almost immediately after these first two shots?—A. Yes, sir.

Q. And it wasn't more than just a very few seconds?—A. Yes, sir.

Q. These first two shots you heard from inside room No. 2, as I understand you, the noncommissioned officers' room?—A. Yes, sir.

Q. Then by the time you got outside the guardhouse and heard these other shots they then appeared to be coming from, as you stated, near that gate or in that vicinity; is that correct?—A. It seems as if the heavy firing was right along in that vicinity, sir.

Q. But the two shots you heard while you were still inside the guardhouse seemed to be from points further east, is that right?—A. Yes, sir. I won't say east, but points down this way further; I don't know exactly east from west.

Q. The river was west from you. So these shots came from a point further east from the gate, then?—A. Yes, sir.

Q. Can you, when you are inside a room, definitely locate the position from which shots have been fired that you have only heard through the open doorway? Can you be absolutely positive as to just where those first two shots were fired?

By associate counsel:

May it please the court, that is not a fair question. I think enough has been said upon the character of this examination to call the attention of the prosecution to the fact that we insist upon any assumption that is being made in a question to be a fair assumption from the evidence already given by the witness. The witness has already testified that he has not definitely located any shots, but simply the general direction from which those shots came. He has been asked several times and each time has said from a northeasterly direction from the room in which he was sitting in the guardhouse. I make that an objection; any assumption that is made in a question we wish to be a fair assumption from the evidence already given.

Q. Can you be absolutely positive as to the general direction from which these shots came, inasmuch as you were sitting in a room at the time and the sound might have been deflected, or rather you get a wrong impression as to the location of the people firing these shots? Can you be positive those shots came from a northeasterly direction?—A. I won't say northeasterly direction; I am sure they came from a direction in this direction from where I was sitting. I was sitting with my back to the parade ground, and I got a good hearing in this ear of those shots coming from this direction.

Q. They came from your left?—A. Yes, sir.

Q. But you are not able to state with any degree of precision where those shots were?—A. No, sir; I didn't see them; I only heard the sound.

Q. But after you came out of the guardhouse and heard this fusillade you could then get an uninterrupted hearing of those shots; there was nothing in your immediate vicinity that might deflect the sound one way or the other; you were out in front of the guardhouse. Is that not so?—A. No, sir; that is not so; I was not out in front of the guardhouse.

Q. You went to the front door?—A. I got the guard out; there was quite a confusion around the guardhouse getting these men up, and these two shots had been fired a long time before that.

Q. A long time before?—A. The shooting was going on. I say a long time—fifteen or twenty seconds; probably a minute would be a long time. When I first heard these two shots it was practically quiet; nobody stirring around; everybody lying down except myself, and I was sitting down.

Q. Was Sergeant Reid asleep?—A. I don't think he was asleep; but he was lying on a cot to my back.

Q. How long had he been there?—A. Ever since he had been out and heard the reports from check roll call.

Q. At 11 o'clock?—A. Yes, sir.

Q. And he had been lying there ever since?—A. He didn't come in and lay down immediately; I and him talked awhile; but he laid down about half past 11.

Q. But you think he was not asleep?—A. He might have been; but as soon as the shooting began I meant to turn around and say, "Outside, guard," and he was up on his feet and said, "What's the matter, Corporal? Get the guard out." And I said, "I don't know." And he got out, not quite so fast as I did.

Q. So right after these first two shots Sergeant Reid jumped up and said "Outside, guard," and then you helped arouse the guard; did you help arouse the men that weren't awake?—A. I don't understand; right after the two shots. I mean this was during the shooting, this fusillade you speak of, that this occurred, and that came right after the two shots.

Q. But when you heard the first two shots, didn't you jump up then?—A. No, sir; two shots never excited me. They weren't at the guardhouse. Had it been No. 1 or some one else there I would of; but it sounded at a distance, not around there.

Q. So it wasn't until the fusillade began that you jumped up?—A. We had no need before that; there was nothing to cause us to be upset.

Q. And it is not an unusual thing for shots to be fired off there in the evening, is it, at Brownsville?—A. I don't know, sir; not whilst I were around there. I was only there a short time.

Q. So, who formed the guard in front of the guardhouse, Sergeant Reid or yourself?—A. Sergeant Reid, sir.

Q. Then did he order the bugler to sound call to arms?—A. I don't know, sir.

Q. Was call to arms sounded at that time?—A. Yes, sir.

Q. Just as soon as the guard turned out?—A. Not just as soon as the guard turned out.

Q. But as soon as the bugler got out there?—A. I don't say as soon as he got out; but he ran out there, and he said there were some shots coming up, and he ran back, and I shoved him back out doors and said, "Get out and fall in with that guard." That was all done in a short interval of time; didn't take up much time about this business at all.

Q. When this fusillade began and the guard rushed out in front and heard some of these bullets coming, the musician ran back inside, and then you turned him back outside, and right after that he sounded call to arms?—A. Yes, sir.

Q. This was only a few seconds after the main shooting began?—A. Yes, sir; a few seconds.

Q. How much? Possibly fifteen seconds?—A. I could not say. I would not attempt to, and I don't think you would either if you were there and as confused as I was. It might have been a minute; I won't say.

Q. But it came along right after you had gotten out the guard?—A. Along; yes, sir.

Q. When was it you heard Private Howard on post No. 2 call the corporal of the guard?—A. I don't know, as I didn't hear him at all myself. The commander of the guard and those outside heard it.

Q. Did you hear him shoot?—A. I couldn't say I heard him shoot; I couldn't tell his shots. I don't know whether he shot or not.

Q. So you didn't hear him call for the corporal of the guard?—A. The commander of the guard told me, and he first started to send me, but he said, "You are on watch, Corporal, and I will send Corporal Burdett—I might have to go myself later."

Q. He sent Corporal Burdett and how many men?—A. Two privates.

Q. Do you remember their names?—A. No, sir.

Q. They were privates of his, Corporal Burdett's, relief?—A. I think so. I won't say, because I don't know who they were.

Q. You don't know their names?—A. No, sir.

Q. You stated you stationed a couple of men; one on either side of the guard house, I believe?—A. Yes, sir.

Q. Where were the other men, aside from the four men of your relief on post and Corporal Burdett and these two privates who had gone with him to respond to the call of No. 2—where were the other two noncommissioned officers and the privates of the guard?—A. They were right along in front, under supervision of the commander of the guard.

Q. Were they lying down or standing up during this firing?—A. They were at first standing up, but after we got a few shots across there I stepped to the door and advised them to have the men lie down, because there was a big light in front of the guardhouse, and they were making a target of themselves, and bullets were constantly coming across.

Q. Didn't you turn that light down after that?—A. That light?

Q. Yes.—A. No, sir.

Q. You never turned it down at all?—A. No, sir.

Q. So, during all this firing that light continued to shine out there in front. How long after the shooting began did this quartermaster clerk come there?—A. I don't know just how long—he come in there you know——

Q. About how long? Can you give us any idea, whether a minute or ten minutes?—A. I won't say; I don't know how long it was.

Q. Along during the latter part of the shooting?—A. Along during the shooting, because the shooting were going on when he come there.

Q. Was one of these women that came to the guardhouse during that time a Mexican woman known as "China?"—A. I don't know. I didn't know the lady at all.

Q. Was she a Mexican woman?—A. I don't know. The woman with her told me she was a Mexican woman—Mrs. Jones—yes, sir.

Q. That is, Mrs. Jones told you this woman accompanying her was a Mexican woman?—A. Yes, sir.

Q. How long after the first shots was it when the sergeant-major came to the guardhouse?—A. I don't know, sir; he come down there during the shooting. I can't say anything about time, because we were not looking for the time; we were guarding against the enemy; we were expecting to be taken there any time by somebody.

Q. Now wait. You stated in your direct examination that the sergeant-major came to the guardhouse right along through this shooting, the latter part of it. What did he say to you, anything?—A. Yes, sir.

Q. What did he say?—A. He asked me if I knew where the commanding officer was.

Q. What did you tell him?—A. Told him I did not.

Q. Did he ask Sergeant Reid anything in your presence?—A. He was talking to all of us out there. He weren't speaking personally to me or Sergeant Reid. He was challenged by my No. 1, but I went out and received him and brought him in to find out his business.

By associate counsel:

May it please the court, that is all objectionable; merely hearsay; has no purpose. It is merely hearsay between Sergeant Reid and this witness. It is irrelevant.

By assistant judge-advocate:

May it please the court, this happened at a time, according to the witness, when the bullets were singing through the air; and if it is not a part of the res gestæ, I don't see that anything possibly could be.

By associate counsel:

May it please the court, it is thoroughly objectionable, but I withdraw the objection merely to save time. Altogether objectionable.

Q. So you received this sergeant-major after he had been challenged and halted by No. 1?—A. Yes, sir.

Q. And you let him come up to the guardhouse then—did he come up to the guardhouse?—A. If he was in the vicinity of the guardhouse, he came up there. I went out of the guardhouse to receive him and advance him, and then there was the commander of the guard, and I turned him over and stepped back inside of the guardhouse, where my duty called me.

Q. But you heard him inquire for the commanding officer?—A. He spoke that to me personally.

Q. Did he whisper to you?—A. Oh, no, sir.

Q. Did he call out?—A. Spoke in an ordinary tone of voice.

Q. How far was the sergeant of the guard from you?—A. I didn't measure the distance; I looked back to see, and he was right there.

Q. Within 10 or 15 feet of you?—A. I don't know; I didn't have time to take particular measures of where everybody was.

Q. Wasn't the sergeant-major excited?—A. I don't know.

Q. Did he appear to be?—A. He might have been. After I received him I went on to perform the rest of my duty; I wasn't noticing whether he was excited or not.

Q. This was during the latter part of the firing, you say, that he came there; is that correct?—A. Yes, sir.

Q. About how long, to the best of your recollection, had the firing been going on when he arrived?—A. I don't know, sir.

Q. Can you say whether ten or fifteen minutes?—A. I would not say; I was not noticing the time. I think the firing in general went on from the time it first began until the first shots I noticed—must have been fifteen or twenty minutes.

Q. But his arrival there was after the arrival of this quartermaster clerk or before?—A. I don't remember; both connections were close together.

Q. Who came first, the two women or the sergeant-major?—A. The sergeant-major and the clerk both came before they did.

Q. They came after. Now, can you give us your best recollection as to the order in which these three different parties came to the guardhouse?—A. One of them, the two women came from the——

Q. I don't mean the direction, but the order in point of time; which party came first, which second, and which last?—A. No, sir; between the clerk and the sergeant-major I don't remember which came first, but I think the clerk came first; I wouldn't say, but I think so.

Q. Then, you are sure that both the clerk and the sergeant-major came before the women, or are you positive about that?—A. Yes, sir; I am positive about that.

Q. Did you hear any commands given by anyone that night aside from those given by the sergeant of the guard?—A. No, sir.

Q. How soon after the first two shots were fired did Corporal Burdett and his two men leave the guardhouse to respond to the call of No. 2?—A. Why, I don't know, sir. The call for No. 2—you know he didn't make any call for relief at the first two shots—he made his call during the general firing.

Q. So that——A. I don't know how long an interval of time it were; I couldn't say.

Q. Did you know at the time he was leaving for that purpose?—A. For what purpose?

Q. To respond to the call of No. 2.—A. Yes, sir.

Q. You didn't hear him call?—A. I didn't hear him, because, the commander of the guard informed me, because he was going to send me instead.

Q. Did the commanding officer or the officer of the day visit the guardhouse during the shooting?—A. No, sir.

Q. Did you see or hear anything of these two officers during that time—the time of the shooting?—A. No, sir; I didn't see them.

Q. Did any officer come there to the guardhouse during the shooting or immediately after for the purpose of checking up the men and seeing whether all were present or not?—A. No, sir.

Q. When did an officer first come to the guardhouse after the end of this shooting?—A. Was in the morning, the first officer present, that visited the guard and inspected the guard.

Q. About what time?—A. At reveille.

Q. And this was the officer of the day?—A. Yes, sir.

Q. The commanding officer did not come to the guardhouse during that time?—A. Not to my knowledge, sir.

Q. You were awake all the time, were you, from 12.18 until daylight?—A. Yes, sir.

Q. You never were asked any questions by Major Blocksom, I believe you stated?—A. Yes, sir.

Q. Who was the first officer to whom you made a statement relative to the occurrences of the night of August 13 and 14, or the night of August 13?—A. Why, my commanding officer, Major Penrose, sir.

Q. Did you tell him in effect, substantially, the same as you have told the court in last Saturday morning's session and this morning?—A. No, sir; he didn't go into the details that way.

Q. You didn't tell him anything more or anything outside of what you have told the court, did you?—A. I didn't tell him as much as I have told the court, sir.

Q. But you didn't tell him any particular event or circumstance that was connected in your mind with the shooting aside from those you have told this court, did you?—A. I considered it very particular what I did tell him. He only asked me a few questions in a hurry—he was a little excited the next morning—only asked me a few questions, inspected my gun and ammunition, and that was all.

Q. Did he ask you if you knew anything more about the occurrence than you had already told him? Did he not ask you, "Is that all you know about it?" or words to that effect?—A. He asked me a few questions concerning my knowledge of the shooting—whether I had any knowledge of it or did I know of any one who did personally. I did not. I answered him accordingly, sir.

Q. Did he ask you to tell if you knew of any suspicious things that happened during the firing that would enable him to get a clue as to who did the firing?—A. He did later.

Q. When?—A. Several times—different times.

Q. Before you left Brownsville?—A. After we left Brownsville.

Q. I am talking about before you left Brownsville.—A. Well, sir, I think I have—about all he said to me about the shooting. That morning when I was relieved I marched directly to the adjutant's office.

Q. After this investigation by Major Penrose and prior to the time you left Brownsville, did you have any further conversation with him relative to this matter?—A. No, sir.

Q. Did you make an affidavit before Captain Lyon, Twenty-fifth Infantry, on that same day, August 14?—A. Don't remember the dates, but I made one.

Q. Well, it was either that day or the next day, was it not?—A. I don't know, sir; but I made one to him; signed by me, and if you see it you know I made it. I don't remember dates.

Q. It was within a few days after this occurrence, was it not?—A. It was between the occurrence and the time we left, and we left a few days after it occurred; the affidavit was made between these two dates.

Q. You understood at the time that Captain Lyon was trying to get affidavits which would explain the whereabouts of each man of the command, to try to enable them to get a clue to the men who had

done the shooting?—A. That's what I understood. To get information about if any soldiers did this shooting, so to get some information about it.

Q. Did you at that time tell him any particular occurrence or suspicious circumstance that happened on that night, other than those things you have told the court?—A. I didn't, and I didn't tell him some things I have told the court.

Q. But you didn't tell him of any unusual occurrence that took place that night that you haven't already told the court about, did you?—A. No, sir.

Q. You made this affidavit at a time when you knew that the people of Brownsville, at any rate, claimed that soldiers had done this shooting, did you not?—A. I did, sir.

Q. You knew that Captain Lyon was trying to find out who did the shooting, didn't you?—A. I thought he was; yes, sir.

Q. And you knew that not only the people of Brownsville, but the country at large, at that time believed that the shooting was done by colored soldiers?

By counsel:

I object to that. That is a form of question that is not permissible on cross-examination. If he will change his question so as not to imply something that isn't a fact—nothing shown to indicate it at all—we won't object to it, and he must know, the examiner must know, that is not a permissible question. If he lays the foundation for it we don't want to object to it.

Q. Did you know that the mayor of Brownsville had reported to Major Penrose that the soldiers had done the shooting?—A. No, sir.

Q. But you knew that the people down there believed that it had been done by the soldiers?

By counsel:

We object to that. There is nothing to indicate any such belief and the direct examination indicates no such thing; the witness had not been out in town at all he said, and if he will lay the foundation for it it may not be objectionable. But the witness had not been out, he said he knew nothing about the feeling, it was on direct examination he said this and, furthermore, it is in evidence here that this witness could not have been out in town after that, so he could not know what the belief of the people of Brownsville was, and it is not proper cross-examination as must be perfectly patent.

Q. I will read to you now from page 646 from Senate document entitled "Affair at Brownsville, Tex.; hearings before the Committee on Military Affairs, United States Senate, concerning the affair at Brownsville, Tex., on the night of August 13–14, 1906." On page 646 of that document, under the heading "Testimony of Samuel Wheeler, colored (continued). Question by Senator Warner——"

By counsel:

Until it is shown that this witness appeared there the examination as started is improper. Nothing shown about it.

Q. Did you testify before the Senate committee about February 24?—A. I don't know, sir; I testified there.

Q. Or February 19?—A. I don't know, sir, what date it was.

Q. Did you testify——A. Before the Senate committee.

Q. Before the Senate committee——A. In Washington.

Q. And you were asked questions by the various Senators of that committee, were you not?—A. Yes, sir; I was.

Q. (Continuing.) "Question. Yes. You knew within a very short time, within the next day or two, so that you saw that it was charged that ammunition had been found such as was used by your soldiers in their arms, didn't you?—Answer. I think I read it in the paper the next day. Question. Next day?—Answer. But I don't know anything about the ammunition they found." Is that correct?—A. Yes, sir.

Q. So you knew from reading the paper next day that the people, or at least the press of Brownsville, Tex., had charged that the colored soldiers had done this shooting?—A. Through the paper.

Q. And didn't you feel that it was your duty as a soldier, in case you knew of any suspicious circumstance that would tend to show that soldiers of the command had not taken part in that shooting—don't you think it was your duty to have so informed Captain Lyon or your commanding officer?—A. Had I knew anything of it?

Q. Yes.—A. I feel it my duty now, if I knew of anyone who did it.

Q. But at that time, when you knew that it was charged in the press of Brownsville that colored soldiers had done this shooting, do you not think it was your duty to have reported any suspicious or unusual occurrence or happening that may have come to your notice during or about the time of this firing of August 13—don't you think it your duty to have reported that to Major Penrose, or Captain Lyon, or your company commander?—A. I don't understand you; you said during the firing.

Q. If you knew of any unusual occurrence that would tend to show that soldiers were not responsible for this shooting, don't you think you ought to have told your company commander about it when you made this affidavit?—A. Anything of that sort showed for itself; I didn't have to tell him. I knew of no one who taken any part in this shooting or did the shooting, and I had nothing to tell him about anyone that didn't take any part in it. It showed for itself.

Q. But any little things you noticed during this shooting or at the time of the shooting that would tend to show that no soldiers took part in it, didn't you think you ought to have told him?—A. He could see for himself. I don't understand you when you say during the shooting or at the time of the shooting. I didn't see anything.

Q. Did you make an affidavit before Colonel Lovering about September 26, 1906?—A. I made an affidavit before him some time after we came up in the Territory—Colonel Lovering—yes, sir.

Q. At Fort Reno?—A. Yes, sir.

Q. You stated at that time he gave you no opportunity to tell all you knew about the affair; is that correct?—A. That is a correct statement.

Q. Did you testify before General Garlington at that time or later?—A. Some time; it were not at that time I know.

Q. It was in December some time; I am not sure as to the exact date, but did you testify before him?—A. Yes, sir.

Q. Did he fail to give you opportunity to tell all you knew in regard to the affair?—A. I do consider that he did fail to give me an opportunity to tell him what I thought about the affair.

Q. So that you didn't have an opportunity then to tell all you knew about the affair in December when you testified before General

Garlington? Yes or no?—A. I considered that I didn't have an opportunity to tell him.

Q. Did you testify before a Mr. Stewart, representing the Constitution League, on November 24, 1906, or thereabouts?—A. I don't know whether I testified. I taken a sworn affidavit before Mr. Stewart some time, whatever date it were, down there.

Q. Did you read that affidavit over before you signed it?—A. He didn't have it until I made it.

Q. Did you write it out in your own handwriting?—A. I talked to him and had him to write it down for me.

Q. Did he write it down in longhand or was it taken down in shorthand and copied on a typewriter?—A. I think he ordinary written it down. I don't know whether he struck it off on the typewriter or what he did.

Q. You had an opportunity of looking this over before you signed it, didn't you?—A. I remember very well I think what I were telling him. It weren't very much.

Q. You knew at the time that Mr. Stewart was there in the interests of the colored soldiers, did you not, trying to get them restored?—A. I didn't know what it was. I knew he was down there for some purpose. I was in the act of all upset; I was going to be discharged—getting my family out of the way, attending to my own personal business.

Q. Did you not know at this time that Mr. Stewart was there in the interests of the soldiers and not against the soldiers?—A. To say know it, I did not, sir. He could have come down there just otherwise and I would have told him what I had to tell—tell anyone.

Q. But that was your understanding, it was a friendly investigation, was it not?—A. No, sir; didn't have any understanding about the matter at all.

Q. Was it your belief at the time you made this affidavit that it was being taken to help the soldiers?—A. I thought all of my affidavits was taken for that purpose, all of them—everything I give—to help the right man.

Q. Did you not know Mr. Stewart was trying to find out all he could that would help to bring out that the soldiers did not do the shooting?—A. No, sir; oh, no, sir; didn't have any idea of that kind.

Q. You just thought he was trying to get the whole truth of the affair?—A. Right thing, just like anybody else who come there.

Q. Did you tell him the truth? What you told him was the truth?—A. Yes, sir.

Q. But you didn't tell him everything you knew about it, did you?—A. I told everybody everything I knew about it. I think I did.

Q. You therefore, between August 13, 1906, and February 19, 1907, made at least five different affidavits relating to your knowledge of the occurrence of August 13?

By counsel:

We object. It isn't true. He did not say so, and the evidence does not support it. If he will frame his question in proper shape we will interpose no objection. It is not in evidence at all that he made five affidavits.

Q. You made one affidavit before Captain Lyon, did you not?—A. Yes, sir.

Q. You made one before Colonel Lovering?

By counsel:

May it please the court, he did not; he was examined by Colonel Lovering; it isn't an affidavit at all. It is an examination in the usual form, and the record don't bear out the statement.

By assistant judge-advocate:

May it please the court, I acknowledge I was mistaken there; two of these were investigations and not affidavits.

By president of the court:

If you will, please frame questions so as to avoid delay from these unnecessary objections.

Q. So that between August 13, 1906, and February 19, 1907, you made at least three affidavits and were cross-questioned in two other official investigations?

By counsel:

I don't think he did make three affidavits.

Q. Did you make one affidavit before Capt. S. P. Lyon, Twenty-fifth Infantry?—A. Yes, sir.

Q. Did you make one before General Garlington?

By counsel:

No; he did not. That is where the mistake is.

By the judge-advocate:

I think the witness is capable of answering his own questions.

By counsel:

The witness is capable, and we are also capable to make the objection; and the court has just instructed counsel not to ask questions in that form, and we don't want to object to any question except where it is improperly framed.

Q. Between the 13th of August and February 19, 1907, you made two affidavits with reference to the affair of August 13 and were officially investigated at least three times. Is that correct? The two affidavits I refer to were taken before Captain Lyon and Mr. Stewart and the three official investigations were before Major Penrose, Colonel Lovering, and General Garlington. Is that correct?—A. You mean they were taken from me or you mean they were taken before them? I don't understand just the way you explain the question to me.

Q. I mean that you swore to two affidavits during that time and you were also questioned by three official investigators during that time. Is that correct?—A. What three?

Q. Major Penrose, Colonel Lovering, and General Garlington. Weren't you asked questions by each of these officers?—A. Yes, sir; I just made a statement to that effect here.

Q. So that during that time—from August 13 last year until February 19 this year—you had five opportunities to talk officially about this subject?

By counsel:

That is not a proper question at all; the object is clearly to confuse the witness, and it gives an erroneous impression of just what was said. The witness has stated specifically on both direct examination and again on cross-examination, and the counsel will bear me out, that he wasn't given a full opportunity to make a full statement at any of these; he has stated that the affidavits were drawn up by others on the statements he made, and that on two occasions he was distinctly and in terms limited, and in the other examination he answered all questions asked him and has described at some length what these examinations are. I have not the slightest objection to this examination going into anything—to approach it from any direction—but I do object to his so framing his questions as to give an absolutely erroneous, misleading, and confusing idea as to what he wants to bring out, and on that account we object to the question. We don't object to the matter he wants to bring out at all, but we have to object to it in that form.

Q. You were officially questioned on this subject at five different times during the period named, were you?—A. Five different times?

Q. At five different times.—A. No, sir; I would not consider I were officially questioned on this.

By counsel:

May it please the court, it shows on the face of it, to illustrate the point I am making, the examiner must know that Stewart or anybody disconnected with the Army in some official capacity could make an official investigation—that is clear—and it makes me get up here and impede the case without any necessity, and the counsel must know that is not correct.

Q. You made one affidavit before a military official during that period. Is that correct?—A. Only one, did you say?

Q. I say you made one, did you, before Captain Lyon? You made an affidavit before Captain Lyon during that period, did you not?—A. Yes, sir.

Q. You, during that same period, were asked questions with regard to the occurrences of that night by your commanding officer, Major Penrose, were you not?—A. What night, sir?

Q. August 13.—A. No, sir.

By counsel:

He was not examined that night; counsel is in fault. He was examined the following morning by Major Penrose, when he marched off guard.

By assistant judge-advocate:

I would like to have my question read over as recorded.

(Question was read.)

By counsel:

I beg your pardon. I understood that you meant he was asked questions that night. I beg your pardon.

Q. So during that period you were asked questions concerning the occurrence of August 13 by your commanding officer, namely, on August 14?—A. Between August 13 and the date of my discharge you have reference to?

Q. Yes.—A. Yes, sir.

Q. And you were asked questions concerning this affair by both Colonel Lovering and General Garlington at different times during this period. Is that correct?—A. Yes, sir; some questions.

Q. And you made an affidavit before the Senate committee on or about February 19, 1907—made a statement with reference to some other things that came under your observation about the time of the

here is the guardhouse. This street is Adams street, and this Washington, and this Elizabeth, which opens on the main gate of the garrison. Where was it, to the best of your belief, that these horses were galloping at the time you heard them?—A. I would like to say there are some streets and alleys you have not got on that map. That is not a good map of that location down there, sir.

Q. There is an alley running parallel to these streets I have named—just midway between. Here is an alley; here's another here. Where was it you heard those horses?—A. I would like to say there are some more alleys, and it might have been in there.

Q. Just point out where you think those horses were.—A. It would sound to me from the guardhouse, in here. There are some streets and alleys missing on that map that are not on there.

Q. No; there are not.

By counsel:

Yes; there are. It has been shown by your own evidence. It has been shown that the witness was at the guardhouse, if I may so state, and the map is incorrect, and there are streets and alleys both missing, and the witness is perfectly correct and must not be corrected, in my opinion.

Q. This street here branches off here, or in a direction north and south.

By counsel:

Has the witness stated where it was? Has he located it at all?

(Answers of witness read over.)

By counsel:

We object to any further examination by that incorrect map until the witness has stated away from the map where he understood it to be, with respect to his examination, and then if the map does not show it we will still object to any further examination on the map that does not show it.

Q. From where did these sounds of running horses appear to come?—A. From my right and front.

Q. As you faced in what direction?—A. I am right in the doorway here, with the musician, to get him out in line.

Q. In the front door?—A. Yes. Some of these streets going off down there (indicating a right front).

By counsel:

We object to any further examination of this witness on that map, which is incorrect, and we object until a correct map can be produced.

By judge-advocate:

May it please the court, I will have such a map this afternoon.

The court then took a recess until 2.10 o'clock p. m., at which hour the members of the court, the judge-advocates, the accused, his counsel, the reporter, and the witness resumed their seats.

(Assistant judge-advocate states that witness indicated a point on the garrison road at about the intersection of the Cowen alley——)

Counsel for the accused:

No; he didn't; it wasn't at the intersection, as I understood it; he said in here somewhere, to the west of that road.

Assistant judge-advocate:

Then, drawing his pointer northward.

The presiding officer:

The court has already requested that remarks be addressed to the court, and not in the way of controversy between counsel. It delays matters, and I prefer to have that instruction followed.

Counsel for the accused:

Does that apply when it is descriptive, and that is what I intended in answering him?

Assistant judge-advocate:

I was stating the way witness indicated, so the reporter could get it down on his record.

The presiding officer:

They have a perfect right to object if they think you are not giving it correctly, but I object to the carrying on of conversations between one another; I did not take exception to the objection.

Q. How many horses were there, do you think?—A. I think probably three or four.

Q. Was this before or after those first two shots were fired?—A. Now, this——

Assistant judge-advocate:

Wait a moment. I believe the witness has already answered that. He stated it was along during the firing downtown.

Q. Did you at the time think those horses had any connection with the shooting—that their riders, in case they were ridden, had anything to do with the shooting?—A. Just at that moment I didn't give it a thought about whether they might have or not. It was all in conjunction about the same time.

Q. I will read to you from page 645 of a Senate document entitled "Affray at Brownsville, Tex.," in which your testimony is quoted: "Q. And you thought these horses were mounted then?—A. I thought they must have been mounted by some one, and the ones they were mounted by must have been connected with the shooting. Q. You thought that on the 24th of November?—A. No, sir; I didn't think it on the 24th of November. That is what I thought that the horses had to do with this on the 13th of August. Q. Why didn't you tell it on the 24th of November?—A. Because I didn't think it was necessary. I don't know. I hadn't been asked the question about the horses, and didn't think it was necessary." Did you use the Springfield rifle in target practice on the range last summer at Fort Niobrara?

Counsel for the accused:

We are going to just formally interpose an objection to that. If the court intends to let in everything that occurred at Fort Niobrara, we maintain that

fusillade was over?—A. No, sir; that was during the fusillade, during the shooting, sir; that was right along during the shooting. It seemed as though he must have had an awful gun; I could hear the report from it; it seemed like a mile down through the town." Is that correct?—A. I never made any such statement that those people were mounted. I said I heard an awful gun firing way down in the lower part of town, because it fired very loud; it must have been quite a ways off.

Q. But when you said here it seemed as though he had an awful gun you didn't refer to the riders of any of those horses?—A. No, sir; because I don't know whether the riders had any guns; I didn't see them.

Q. Now, this firing that you heard, this fusillade, did that apparently start near the post and work away from it or start away from the post and work toward it?—A. It must have started near the post. I noticed one big, heavy shot that seemed to be working away; I could hear a shot from the gun about every five seconds, and it seemed like each shot was going farther away.

Q. And the last shooting you heard was farther away from the post than the first?—A. The last shooting I heard was the report of this heavy gun and was farther away.

Q. You didn't hear any shooting that night that sounded like 8 or 10 Springfield rifles being fired off at one time?—A. I couldn't tell whether they were 8 or 10 shots from Springfield rifles or not; I heard several shots that sounded like Winchesters and shotguns. I didn't hear any shot that sounded like the rifle we had at target practice. I didn't try to stop and pick out the sounds of the shots; everything come up in a flash, like that, and lasted a few minutes.

Q. Sergeant Reid got up about the same time you did. Did he go out in front of the guardhouse then?—A. That is where he formed his guard; taken the whole guard out in front of the guardhouse, sir.

Q. And the musician run out at the same time?—A. I don't know whether he run out at the same time or not; I met him coming out when I went in after the musician. He couldn't have gone out ahead of this time, because he was in the guardhouse.

Q. And it was right after that that he sounded a call to arms?—A. He had been out there, you understand, and was coming back. He may have sounded some of this call before, because I know I met him going back. I know he sounded it while I was standing there at the guardhouse, because he had the trumpet up to his mouth.

Q. You were wide awake at the time this fusillade sounded, sitting in the chair, were you not?—A. Yes, sir.

Q. And you ran right out to the front of the guardhouse, did you?—A. No, sir.

Counsel for the accused:

Now, we object to that. The witness hasn't said any such thing; he said just the contrary, and the counsel has been cautioned against that this morning. It is putting words into the mouth of the witness that he hasn't said, and he must know he didn't say it.

Q. It was your duty as corporal of the guard to keep on the alert all the time, was it not?—A. No, sir; I am not to keep on the alert all the time.

Q. Did those first two shots sound like rifle shots, pistol shots, or shotgun shots?—A. Sounded to me like pistol shots, caliber .38, just ordinarily picking up a sound.

Q. Can you give an idea of how many shots you heard that night?—A. Why, no, sir.

Q. The sentinel on No. 2 post walks entirely around the barracks at night, I believe you stated?—A. Yes, sir.

Q. How long does it take him ordinarily to walk around those four sets of barracks?—A. If he walked like me it would take him about twenty minutes, but some of them it would take them forty or fifty minutes, walking around looking at something that didn't interest them; so I couldn't tell how long it would take him to go around.

Q. With what kind of ammunition was your company supplied at this time?—A. With the regular ammunition—regular barracks ammunition.

Q. Was it called the Springfield ammunition?—A. It was the late model; I don't know, sir, whether they called it the Springfield ammunition or not.

Q. Did it have a steel-jacketed bullet?—A. Yes, sir; it was. It had a steel-jacketed bullet, and was used in a clip.

Q. Was your company supplied with the so-called guard ammunition?—A. Not to my knowledge.

Q. Did you have any of it yourself?—A. No, sir; I had 20 rounds of the——

Q. Regular ball ammunition?—A. Yes, sir.

Q. You don't know what kind of ammunition members of your guard had who were not members of your company?—A. No, sir.

REDIRECT EXAMINATION.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. Do you happen to know whether anybody was sent to the ferry at or about the same time that you went out with your patrol?—A. Yes, sir.

Q. Who was it?—A. One of the members of my relief, a private soldier by the name of Alexander Ash.

Q. And what post did he walk that night?—A. No. 4, sir.

Q. And that was back of the corral?—A. Yes, sir; around the quartermaster and commissary department and the corral.

Q. Who wrote out your affidavit that you made before Captain Lyon, do you know?—A. Yes, sir; Lieutenant West, my second lieutenant.

Q. It was reduced to writing and you were sworn to it?—A. Yes, sir.

Q. After the captain had gotten through it was reduced to writing and you read it over and swore to it?—A. Yes, sir; that is the way it was, and then signed it.

Q. Then, Corporal, as a matter of fact, did you ever tell anybody about those horses until it was brought out on cross-examination by Senator Warren?—A. No, sir.

Q. You didn't tell Senator Foraker, who examined you first, about it?—A. No, sir; I didn't.

Q. The first time that you remember ever saying anything about horses to anybody, then, was when they brought it out on cross-examination by Senator Warren?—A. Yes, sir; I were just in the act of telling the Senator about this——

Q. What Senator?—A. Senator Foraker, when he turned me over to Senator Warren, and I couldn't get it in there, and he went on and when we got to the point about these two shots, and whether it was possible for these people to get from this point down to the other, I had an opportunity to explain to him about the horses, but while at the same time I don't think they even had time to get down there, because this shooting taken place about two seconds after the first shooting.

Q. As a matter of fact, were you not asked substantially this question: "Could the persons who fired the two shots have passed from the place where you located them down to where the fusillade was in the interval of time between the two shots?"—A. They couldn't have passed down there.

Q. And you answered that they couldn't?—A. Yes, sir.

Q. And it was in that connection that they brought out the question of you hearing horses moving?—A. Yes, sir.

Q. But you didn't even say that the men on horses could pass down there in that interval?—A. No, sir; if it was where I thought it was.

Q. Did you in that examination or at any time locate the street on which you supposed these horses were?—A. No, sir; I couldn't. The Senator he named some streets and wanted me to particularly say it was on the street, but I don't even know the name of the street that led from the garrison downtown, and I couldn't do it.

Q. Now, was this sound as you located it directly off to your right or a little to your right and front as you stood facing the parade ground? What is your recollection?—A. It seemed to me like it might have been off slightly to my right and front, if I understand it right. Direct to your right would be right straight down the line, but it seemed to be right off in here (indicating).

Q. A little to your right and front?—A. Yes, sir; that might have been on account of an opening right straight through there, in front of the guardhouse, I might say. I didn't have time to stop and try to locate the going of the animals.

Q. Now, isn't it a fact that you were cross-examined on that affidavit on that very point, about where you stated with reference to the firing that it was 100 yards distant?—A. Yes, sir.

Q. And isn't it a fact, or is it not a fact, that you explained to the committee, as you have to this court, that that was a mistake?—A. Yes, sir; because 100 yards would have brought them way inside the garrison, and I could have had a good chance to see everything that was going on if it hadn't have been but 100 yards from the guardhouse. I know I never said that.

Q. When you said in your cross-examination this forenoon that that light was not turned down, you meant the street light, did you?—A. Yes, sir.

Q. By street light I mean the light that was outside in front of the guardhouse. Is that the one you referred to?—A. That is the one I was talking about, because the officer was after me about the light in front. He was talking to me about the light in front. He

wasn't talking to me about the lights in general about the guardhouse, but was talking about this one particular light.

Q. This morning you were about to say, when you were interrupted, something about your getting this information from this Viola Taylor. What information did you get about that and report?—A. All the information—in fact, I got all the information that I knew about this Miss Evans and the rest of the people who lived in that house through her. I simply went to her——

Assistant judge-advocate:

I object to this. If Viola Taylor is available as a witness, she can state what she knows about the subject under oath.

Counsel for the accused:

If the court will recall, this was gone into on cross-examination this morning, and it was shown on cross-examination that he made a report to Captain Macklin, and that Captain Macklin made a certain response, and we have a right, may it please the court, simply to clear up that and show what he reported, and show why, or some foundation, why Captain Macklin said he would do this; it is simply something that was opened up by the defense on cross-examination, and we want to clear it up.

Assistant judge-advocate:

I will withdraw that objection.

Q. Go on, then.—A. When I had this conversation with Captain Macklin, and he instructed me to try and gain some information about these families who lived there, I went over to this house, because I knew this girl worked there, and asked her who were those other people that lived in the house, and she first just verbally spoke it out, and I said, "Would you mind writing that out for me; I might forget the names?" and she got a piece of paper and set down to the table and written it out for me; and she said, "What is the trouble?" I said, "There are some wrong accused there, and we want to get it straightened out;" and she said, "Yes; my madam told me about it this morning," said, "Mrs. Evans came in here and asked her if she didn't hear her make an alarm on the porch;" and she said, "No;" and she says, "I did; I was assaulted out there by a negro;" and she said, "No; I didn't hear any alarm——"

Assistant judge-advocate:

I object to this as being purely and entirely hearsay, and it really should not go down as evidence. The fact that he went there and obtained the names of the parties in that house from this woman are material points; but, so far as any conversation he had with anyone about those things is concerned, I don't see how it is admissible as evidence.

Counsel for the accused:

We think it is very material; we want to go on record as saying now it is our belief that Mrs. Evans was not touched by any mortal man, except her husband, and the only evidence that she was assaulted is by her husband saying so; she was brought here and she was not put on the stand. We think it is admissible, because here is what this man found out and reported to his immediate superior that very night, and it is the basis upon which his superior made his remark that the defense brought out. We want to show some connection, some reason, some rhyme and actual connection of the thing. Here he brings out a disconnected, unexplained remark of the officer of the day, and this is based upon a certain report made by this man, and we want the court to know what the report was and what authority there was for it; it simply clears up that transaction.

Q. The rifle which you had and which you described, and which was in your possession all the time until you turned it over at El Reno was a new rifle that was issued to you after they took up the Krags; isn't that so?—A. Yes, sir.

Q. And that is the same rifle that carried what you called the Springfield ammunition in clips, isn't it?—A. Yes, sir.

RECROSS-EXAMINATION.

QUESTIONS BY THE ASSISTANT JUDGE-ADVOCATE.

Q. Why do you say now that your rifle was a Springfield rifle, when fifteen minutes ago you didn't know what it was?—A. The way the question come to me was as though you were talking about a Springfield rifle that was used fifteen or twenty years ago. As I taken the question, you weren't speaking about the new model; we used to have a Springfield rifle, .45 caliber, that we used when I first went into the service, and the way the question come about I thought you spoke about that rifle. I said it was the rifle we had target practice with, so you would understand what I was trying to tell you.

QUESTIONS BY THE COURT.

Q. When was call to arms sounded?—A. Call to arms was sounded right along during this shooting, when the guard was formed.

Q. Who gave the order to sound this?—A. Who first gave the order I do not know, sir.

Q. Did Captain Macklin tell you that he didn't believe Mrs. Evans was assaulted at all?—A. Captain Macklin told me he didn't believe a word of what had been reported about her being assaulted by some of the men.

Q. You have stated that during your various investigations you haven't been given an opportunity to tell all you know about the Brownsville shooting; can you give now any fact that would assist in disclosing the parties who did the shooting?—A. Not any more than I have give, sir.

Q. How many bullets did you actually hear whizzing through the air in your vicinity, omitting those you may have only thought you heard? Give the number you have a distinct recollection of hearing without any doubt.—A. I didn't hesitate to count whether it was four or five, but I heard a number of bullets what little time I was at the door; that was because of this musicianer running back in the guardhouse.

Q. During what part of the firing did you hear these?—A. Along about in the middle of the firing, I guess.

Q. Did you hear any of them strike?—A. No, sir.

REDIRECT EXAMINATION.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. Were you given any sort of recommendation by your company commander when you were discharged?—A. No, sir; not just when I was discharged I were not, but I received the recommendation for

him the very day that I started to Washington; that was the first of the month.

Q. Do you know what he said in it?—A. I don't remember the words just now, but I have it down at my quarters in my grip; I could bring it up any time.

Q. Did he recommend that you be reenlisted in the service?—A. I remember that; yes, sir.

Associate counsel for the accused (exhibits book to witness):

Do you recognize that to be the recommendation?

Q. Read it, if you can.—A. I can't read it very well; that is the same one, because it started off with "Whom it may concern: Samuel Wheeler, he being known to me about three years and had served as corporal from time to time in this period of time."

Associate counsel for the accused (to judge-advocate):

Have you any objection to this recommendation being read from this document?

The judge-advocate:

I think that is objectionable for two reasons: One is that it is not the original document, and the other is that the character of the witness has not been attacked by the prosecution as a soldier.

RECROSS-EXAMINATION.

QUESTIONS BY THE ASSISTANT JUDGE-ADVOCATE.

Q. What time was it when you had the conversation with Viola Taylor?—A. I don't just exactly remember the time, but it was between 8 and 9 o'clock that I had met my patrol and got my instructions from the officer of the day about these people.

Q. Then you went up there to her house?—A. Not immediately, but in fifteen or twenty minutes. I was off my patrol in fifteen or twenty minutes, and then I went over there.

Q. Why didn't you turn out that big light in front of the guardhouse?—A. If I had wanted to make a target of myself, I would have left my No. 1 go out there; I didn't care about getting out there and get shot.

(Excused.)

Counsel for the accused:

The next witness I want is Sergeant Oltmans, the first-class sergeant, Hospital Corps. I simply want to ask the court—I want to remind the court—that in the examination of this witness we notice that the prosecution had before them the evidence of this witness as given before the Senate committee. Now, we haven't the slightest objection to the cross-examination on anything that is brought out by the defense, and we haven't any objection to that being used, or any other paper, if it is for the purpose of disputing the witness, but, as we understood it, the other day the court ruled that this was not admissible for purposes of direct examination on statements made therein; if for the purpose of breaking down anything the witness might say, it is admissible, and I am perfectly willing that it may be gone into for that purpose. My object in arising is to abridge this as much as possible, and I would like to know if that is the understanding of the court. It would perhaps save considerable objection. We don't think it is admissible to take this and make it a basis for a long cross-examination; we don't object to this, because we don't want it to appear that we are objecting to anything that is wanted to be brought out, but we do object to it because it makes a long cross-examination. To illustrate

what we mean, it would be perfectly pertinent for us to bring a witness here and ask him six or eight questions and leave the balance out, because we think we have proved the balance by other witnesses, and if the judge-advocate is going into that in extenso, it simply permits them to go into a long cross-examination on matters not brought out on the direct examination.

The presiding officer:

I think we had better wait until the occasion arises.

Counsel for the accused:

Very well; then we will bring it up as a matter of objection at that time.

FRANCOIS L. OLTMANS, first-class sergeant, Hospital Corps, United States Army, a witness for the defense, was duly sworn and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please state your name, your rank, and your present station?—A. Francois L. Oltmans, sergeant, first class, Hospital Corps; Fort Washington, Md.

Q. Do you know the accused? If so, state who he is.—A. Major Penrose, Twenty-fifth Infantry.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. Sergeant, were you on duty at Brownsville last year?—A. Yes, sir.

Q. Tell the court when you went there and when you were relieved.—A. I went there about three years ago, and I was relieved, I think, on the 15th of October, 1906.

Q. Then you were there during the month of August?—A. Yes, sir.

Q. Do you remember of the members of your family being out to a party on the night of the 13th of August?—A. Yes, sir.

The judge-advocate:

May it please the court, we have no objection to this matter coming in, but I think it is decidedly improper to lead the witness in this manner. If the counsel will make his questions so as not to be quite so leading, there will be no objection on my part.

Q. Where were the members of your family?—A. My daughter was at the house of a man by the name of Cowen in Brownsville.

Q. What time did she come home from that party?—A. A little after 11 o'clock.

Q. Where were you at the time she came home?—A. I was in my bedroom upstairs.

Q. You were awake when she came in?—A. Yes, sir.

Q. Well, were you aroused after you went to sleep that night? If so, tell the court the circumstances.—A. I was aroused, sir, by some firing, what I took to be a .45 caliber pistol.

Q. About what time was this?—A. That might have been maybe half past 11 or thereabouts; I couldn't say; I don't recollect it.

Q. Had your family retired?—A. Yes, sir.

Q. And you had been asleep, had you?—A. Yes, sir.

Q. How many shots did you hear first, Sergeant?—A. The first shots—I heard five that must have been from a pistol—heavy sound,

Q. And what did you report?—A. I told them no; they hadn't struck the house, but we had heard a couple of bullets whistling past by the house.

Q. Did you know who this noncommissioned officer was at all?—A. No, sir; I don't recollect.

Q. Do you pretend to know where these two bullets came from, Sergeant—what point they were fired from? Exactly, I mean, or do you speak from a general direction?—A. General direction, sir. They might have come from the direction of the quartermaster corral.

Q. What I want to get at is, do you attempt to locate them definitely?—A. No, sir; I do not.

Q. Would you be willing to state how far away they were?—A. No, sir; I couldn't say that, either.

Q. Well, you didn't think they were right close at you, did you?—A. No, sir.

Q. You thought they were some distance away?—A. Some distance away; yes, sir.

Q. Did any outside people come to your place that night, Sergeant?—A. Yes, sir.

Q. Tell the court who they were.—A. Two colored women and child.

Q. Did you have any conversation with them or hear any conversation?—A. Yes, sir; one of the women was very excited and asked one of the patients, "Who are you?" The man gave his name, which I have forgotten, and then she made the statement she wanted to sleep in the hospital because the Brownsville people were shooting up the town.

Q. Well, did you give any orders about these people?—A. When she insisted to come in the hospital I sent word by telephone and had them removed by the corporal of the guard.

Q. You sent and had it telephoned over to the guardhouse to get them from there?—A. Yes, sir.

Q. Is that the last you saw of them?—A. Yes, sir.

Q. How many patients did you have in the hospital at that time?—A. I think four, sir.

Q. And how many hospital corps men did you have there then?—A. Two, sir.

Q. And they were whom?—A. Private (first class) Nolan and Private (first class) Sanborn.

Q. Sergeant, had you had a pay day since those Twenty-fifth Infantry men came there?—A. Yes, sir; there was a pay day.

Q. What was the conduct of the men in connection with this pay day?—A. I would call it orderly conduct.

CROSS-EXAMINATION.

QUESTIONS BY THE ASSISTANT JUDGE-ADVOCATE.

Q. Did you ever overhear any remarks made by any of the colored troops there indicating dissatisfaction on account of the treatment they were receiving there in town?

Counsel for the accused:

We object to that. It isn't proper cross-examination, and if he wants to show that it must be as his own witness. It is bringing up in line squarely what we raised the objection or rather question about a few minutes ago.

Assistant judge-advocate:

With all due deference to the counsel for the defense, I believe it rests with the court as to whether they will permit one side or the other to exceed the limits of cross-examination and thereby make the witness their own witness and in order to save time it seems to me that these points may as well be brought out now as to wait later and bring them out.

Counsel for the accused:

We are perfectly willing for him to bring them out in an orderly procedure, but to bring them out on cross-examination, we object to it.

The accused, his counsel, the witness, the reporter, and the judge-advocates then withdrew, and the court was closed, and, upon being opened, the presiding officer announced, in their presence, as follows:

I am instructed by the court to announce that the objection is sustained.

Q. Sergeant, you were asleep at the time these first shots were fired?—A. No, sir. I was asleep at the time they were fired; I was awakened by the shots.

Q. Are you certain those were the first shots?—A. That I heard; yes, sir.

Q. What was the nature of these first shots—could you tell?—A. I took them to be all .45 caliber.

Q. And how many were there?—A. About five.

Q. And after that, the nature of the fire?—A. Was a modern rifle.

Q. And was practically all of it of this modern—did practically all of it sound like the modern rifle fire?—A. Yes, sir; except one part of it that sounded like an automatic pistol to me.

Q. About how long did this firing of the small-caliber rifles keep up?—A. It seemed to be about ten minutes.

Q. And in that space of time you stated that 100 or more shots were fired, to the best of your belief?—A. Yes, sir; they came very close together.

Q. In speaking of this small-caliber rifle, do you mean the high-power rifle?—A. Yes, sir.

Q. Such as the Springfield rifle at present in use?—A. Yes, sir.

Q. Have you ever been on the target range with troops since they were armed with this new rifle?—A. Not with the Springfield, but with the Krag-Jörgensen.

Q. So you have never heard the Springfield except occasionally when sentries fired off their pieces?—A. No, sir.

Q. Did this sound of rifle firing you heard sound about the same?—A. Yes, sir.

Q. Could you distinguish any difference between it? Could you distinguish any difference between it and the shooting you have heard when soldiers fired off their pieces?—A. Except there was more of it, it sounded to me the same.

Q. With reference to the first shots you heard, when was call to arms sounded? Immediately afterwards?—A. It seemed to me immediately afterwards. I was dressing yet when the sound to arms went.

Q. Is there a sentinel around the quartermaster corral on what is known as No. 4 post?—A. Yes, sir.

Q. The two bullets that you have testified to as hearing while you were still dressing came from the direction of the quartermaster corral?—A. Yes, sir; in the general direction.

Q. Is it not possible that these two shots were fired by the sentinel on No. 4?

Counsel for the accused:

We object to that question; that can be drawn by inference. It is not fair cross-examination.

Q. That call to arms came almost immediately, I believe you said, after the first shots were fired?—A. Yes, sir.

Q. And before the rifle firing had reached its height?—A. Yes, sir.

Q. Had the rifle firing started at all when the bugle sounded?

Counsel for the accused:

He hasn't said anything about the rifle firing reaching its height; it is a misleading question, and we don't know what it means and it permits of a sort of inference.

Q. Had the rifle firing began when the bugle sounded?—A. Yes, sir; and the call to arms went immediately after that.

Q. Immediately after the rifle firing started?—A. Yes, sir.

REDIRECT EXAMINATION.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. You said something about mixed firing. Did you hear mixed firing during the rifle firing?—A. Yes, sir; I heard it. It seemed to me an automatic pistol.

Q. Did you hear anything else besides pistol, rifle, and automatic-pistol firing?—A. No, sir; except the first five shots, which I took to be a .45 caliber pistol.

(Excused.)

Counsel for the accused:

Sergeant Frazier is out there, and I think I can save time by putting him on the stand early in the morning, as he has been traveling, but if the court desires we will go on this afternoon.

A member of the court:

I understood from some member that Captain Lyon was to be called as witness for the defense, and he has been here for some time.

Counsel for the accused:

I think we shall claim our right to put our witness on the stand as we see fit. Of course, if the court wishes to order them on in any special order, we recognize the right to do it.

The judge-advocate:

The orderly that was sent after Sergeant Frazier informs me that he is not at present outside, but he can be sent for.

The court then took a recess until 4.10 o'clock p. m., at which hour the members of the court, the judge-advocates, the accused, his counsel, and the reporter resumed their seats.

The presiding officer:

I understand from the judge-advocate that the witness can not be found.

At this point a motion was made by a member to adjourn, whereupon another member requested that a closed session be had before the court adjourned.

The accused, his counsel, the reporter, and the judge-advocates then withdrew, and the court was closed, and, upon being opened, the presiding officer announced, in their presence, as follows:

The court would like to know if the witnesses subpœnaed are all here now?

Counsel for the accused:

I have notice of three more witnesses being here of the list that was subpœnaed the other day. I have indirect information that others ought to be here to-night or to-morrow morning; but that is the only direct information we have now, that three are here at this time.

The presiding officer:

I am instructed by the court to state that the court directs that the judge-advocate will have witnesses in attendance as needed.

The judge-advocate:

The judge-advocate has no knowledge of it, may it please the court.

The presiding officer:

We want the witnesses in attendance as needed, as far as possible.

The court then, at 4.35 p. m., March 11, adjourned until 10 o'clock a. m., March 12, 1907.

CHAS. E. HAY, Jr.,
Captain, Acting Judge-Advocate, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., March 12, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocates. The accused, his counsels, and the reporter were also present.

The reading of the proceedings of March 11 was dispensed with.

The judge-advocate here addressed the court as follows:

As the mandate of the court to the judge-advocate that he shall have witnesses in attendance as needed has been made a part of the record, I desire to say, in order that the reviewing authority may not derive an erroneous impression that any delays are the result of my neglect, that I have not received a list of the witnesses in the order in which counsel intends to call them, nor have I asked it, for I myself declined to give such a list to counsel while conducting the prosecution, believing that such a course would give the defense an unfair advantage in preparing for his cross-examination of the next witness, since the substance of the evidence to be adduced upon the direct examination was to be found printed in one and in many cases two official reports. And for this reason I hesitated to ask counsel to extend a courtesy which I myself had withheld.

Further, I desire to say that, although I had heard indirectly that some of defense's witnesses had arrived at the post, I did not know so officially, as these men I have in mind failed to report to me upon their arrival, and up to the time of this writing have still so failed, with one exception.

In accordance, however, with the mandate of the court, I shall use every endeavor, by conferring with counsel or otherwise, to expedite this trial by having witnesses appear promptly whether called by counsel or by the court or by the prosecution in rebuttal.

By president of the court:

The court, as I understand it, only wanted to provide against unnecessary delays, not desiring to specify witnesses by name, but that a sufficient number of witnesses would be before the court so we could proceed with the trial, and

Q. Is it not possible that these two shots were fired by the sentinel on No. 4?

Counsel for the accused:

We object to that question; that can be drawn by inference. It is not fair cross-examination.

Q. That call to arms came almost immediately, I believe you said, after the first shots were fired?—A. Yes, sir.

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The presiding officer:

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At this point a motion was made by a member to adjourn, whereupon another member requested that a closed session be had before the court adjourned.

The accused, his counsel, the reporter, and the judge-advocates then withdrew, and the court was closed, and, upon being opened, the presiding officer announced, in their presence, as follows:

The court would like to know if the witnesses subpœnaed are all here now?

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CHAS. E. HAY, Jr.,
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HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., March 12, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocates. The accused, his counsels, and the reporter were also present.

The reading of the proceedings of March 11 was dispensed with.

The judge-advocate here addressed the court as follows:

As the mandate of the court to the judge-advocate that he shall have witnesses in attendance as needed has been made a part of the record, I desire to say, in order that the reviewing authority may not derive an erroneous impression that any delays are the result of my neglect, that I have not received a list of the witnesses in the order in which counsel intends to call them, nor have I asked it, for I myself declined to give such a list to counsel while conducting the prosecution, believing that such a course would give the defense an unfair advantage in preparing for his cross-examination of the next witness, since the substance of the evidence to be adduced upon the direct examination was to be found printed in one and in many cases two official reports. And for this reason I hesitated to ask counsel to extend a courtesy which I myself had withheld.

Further, I desire to say that, although I had heard indirectly that some of defense's witnesses had arrived at the post, I did not know so officially, as these men I have in mind failed to report to me upon their arrival, and up to the time of this writing have still so failed, with one exception.

In accordance, however, with the mandate of the court, I shall use every endeavor, by conferring with counsel or otherwise, to expedite this trial by having witnesses appear promptly whether called by counsel or by the court or by the prosecution in rebuttal.

By president of the court:

The court, as I understand it, only wanted to provide against unnecessary delays, not desiring to specify witnesses by name, but that a sufficient number of witnesses would be before the court so we could proceed with the trial, and

in addressing to the judge-advocate of course it was understood by the court that that would be arranged satisfactorily possibly with counsel for defense.

By counsel for accused:

In this connection counsel wishes to announce that he has just been informed that four witnesses, to wit, Privates Howard and Ash, Corporals Madison and McCurdy will leave Washington to-morrow. That's beyond our control, and we want it to be of record that the witnesses we want have not been here as they should have been two weeks ago, and delays are not of our making. We will proceed as rapidly as we can without injury to the defense.

JACOB FRAZIER, a witness for the defense, was duly sworn, and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please give your name.—A. Jacob Frazier.

Q. Your residence.—A. I was born in Tennessee.

Q. Your present residence?—A. Washington, D. C.

Q. Your occupation?—A. I am a witness.

Q. Your means of livelihood, I mean, at present.—A. Not anything particularly. I am not doing anything now but as a witness for the last month.

Q. Do you know the accused? If so, state who he is.—A. Major Penrose; yes, sir.

QUESTIONS BY THE ACCUSED.

Q. Have you ever been a soldier?—A. Yes, sir.

Q. For what length of time?—A. Soldier fourteen years, two months, and five days.

Q. In what regiments has your service been?—A. Twenty-fifth and Twenty-fourth.

Q. How long did you serve in the Twenty-fourth Infantry?—A. About seven months.

Q. How many discharges have you received?—A. Five.

Q. What has been the character of the discharges?

By assistant judge-advocate:

I object to bringing in the character of the witness at this stage of the proceedings. If his character is attacked then it will be perfectly legitimate.

By associate counsel:

In reply to the objection I would state that these questions being asked the witness are purely introductory in character and serve to fix the weight of credibility that may be attached to his evidence.

By assistant judge-advocate:

A witness is believed to be credible until credibility is attacked, at which time evidence of good character may be brought in.

By associate counsel:

May it please the court, I fully understand rules of evidence in regard to assumption that witness is credible until he is proved otherwise, but we know that witnesses before a military court may be brought before the court in a military capacity or simply in a capacity as an individual. My purpose is to establish the length of the service of this man who is going to testify; to the character of that service, to show the weight that may be attached to certain military testimony he is to give.

The accused, his counsels, the witness, the reporter, and the judge-advocates then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce that the objection is sustained.

Q. When did you leave the service, Sergeant?—A. Twenty-sixth of November, sir, 1906.

Q. Were you in the service on the 13th of August?—A. Yes, sir.

Q. What position did you occupy?—A. I was a sergeant, first sergeant, and when discharged was a duty sergeant.

Q. What position did you occupy on the 13th of August?—A. First sergeant.

Q. What company?—A. D Company.

Q. As first sergeant of D Company did you publish any orders to that company at retreat on the 13th of August, 1906?—A. Yes, sir.

Q. What were those orders?—A. That no man would be allowed out of the garrison after 8 o'clock.

Q. Did you in the proper performance of your duty as first sergeant take any steps to see to the execution of this order?—A. Yes, sir.

Q. What steps?—A. I published the order and then afterwards I was told by my company commander if I could find the men on pass to notify them and see that every man were in, would be in the garrison by 8 o'clock. I went through the town, didn't find any soldiers at all in the town, and I came on back to the barracks.

Q. How long did you remain at the barracks?—A. Until half past 9 o'clock.

Q. Where did you go then?—A. Went to my quarters that were issued to me—that is, assigned to me—where I was sleeping at.

Q. Where were your quarters?—A. About 400 or 500 yards from D Company barracks.

Q. Just point out the approximate location on the map. (This is the line of company barracks at Fort Brown, B, C, and D Company barracks and the one vacant; this the town of Brownsville.) Just point out the approximate location of your quarters at Fort Brown.—A. I think it was about here. Near the guardhouse; that is, just opposite the guardhouse. (Points out a place northeast of the guardhouse near the fence separating the post from the town.)

Q. Did anybody else occupy those quarters with you?—A. Yes, sir.

Q. Who?—A. First Sergeant Mingo Sanders and Sergeant Brawner.

Q. Were they present in these quarters on the night of the 13th of August?—A. Sergeant Sanders was.

Q. Where was Sergeant Brawner?—A. He was in charge of C Company's quarters.

Q. What time did you go to bed?—A. I think about 10 o'clock.

Q. Were you awakened during the night?—A. Yes, sir.

Q. About what time?—A. About 12 o'clock.

Q. What did you do upon being awakened?—A. I put on my shoes and my trousers and went to D Company's quarters.

Q. What condition did you find the company in upon arrival at D Company quarters?—A. I found some coming downstairs, some armed, and with their belts and guns.

Q. Was any officer present with that company?—A. Yes, sir.

Q. Who?—A. Captain Lyon.

Q. Was any roll called or any other verification made of the company after your reporting there to your captain?—A. Yes, sir.

Q. Who made that verification?—A. Captain Lyon himself.

Q. What way was it made?—A. On the company parade.

Q. In what way was it he verified the company?—A. He counted each man; started in at the right and went around and counted each man—counted every man.

Q. After the company was formed and counted by Captain Lyon, what were the first orders you received regarding the disposition of that company?—A. The captain gave orders. He had the men to count off and march around in rear of the barracks, between the barracks and the stone wall.

Q. What position did you take up back of the stone wall?—A. Line of skirmishers.

Q. What position were the men in?—A. Some was kneeling, and what you might say almost lying down, just so they could see over the wall.

Q. Could any men have joined D Company after they were counted by Captain Lyon?—A. No, sir; not unless—no, sir.

Q. How do you know that?—A. Because I was in position to see whether anyone could have joined or not after he counted them.

Q. How long did you remain in that position back of the wall—D Company?—A. Probably twenty-five minutes.

Q. What were the next orders you received?—A. To get a lantern and call the roll.

Q. Did you do that?—A. Yes, sir.

Q. Was it an accurate roll call?—A. Yes, sir.

Q. What steps did you take to make it particularly accurate?—A. I started in at the right and called each man's name, and at the same time I walked toward the left to see that each man answered his name and no one answered for him.

Q. What were the next orders?—A. Captain Lyon had orders to assemble his company and march through the town—patrol the town.

Q. How long were you absent in town?—A. I don't know, sir; couldn't say.

Q. Approximately?—A. Half an hour.

Q. Did you make any halts in town?—A. Yes, sir.

Q. How many?—A. Made two.

Q. For what purpose?—A. One of them—there was some Mexicans passing by and the company was halted to see whether they had any arms or not.

Q. What was the next halt you made?—A. Next halt was made just before we got into Elizabeth street, when Doctor Combe hollered, "Halt! Who is that?" Captain Lyon says, "It's me." He says, "Is that you, Captain? Come on around here. There's one man killed, one wounded, and a horse shot. Come on around this way." We followed him around on Elizabeth street.

Q. Did you see any of those evidences of a horse or man being shot?—A. No, sir.

Q. In what formation did D Company march through town that night?—A. Column of fours.

Q. Any noncommissioned officer at the rear of the company?—A. Yes, sir.

Q. What was his function?—A. To see that the men kept in line and kept closed up.

Q. Upon arrival at the post, what were the next orders D Company received?—A. Next orders was to fall out and remain right around there; not to leave the vicinity where they was allowed to fall out at.

Q. How long did they so remain?—A. About three-quarters of an hour.

Q. What did they next do?—A. Ordered to assemble; fall in line and march around to the company parade and dismissed.

Q. Any further orders you received at that time?—A. The guns would be put in the racks, and each man would put his gun in the rack and the noncommissioned officers would lock up the gun rack, and for them to keep quiet the rest of the night.

Q. Was this order carried out?—A. Yes, sir.

Q. Did you make any inspection?—A. I looked through the quarters.

Q. For what purpose?—A. To see that the order was carried out that was issued.

Q. Was any inspection of guns of that company made the next morning?—A. Yes, sir.

Q. Who made that inspection?—A. Captain Lyon.

Q. State the character of inspection made.—A. That morning after reveille first call went for drill. We were all in line, and Captain Lyon came down to the company and says to me, "Sergeant, get all the men out and have them fall in line with their guns." One or two men, cook's police, the room orderly, and the cook, didn't drill that morning, so I had all the men to fall in line with their guns, and I called the roll and reported to the captain. He gave the command, "Open ranks." After the company opened ranks, dressed the company, and gave the command, "Front. Inspection arms." Captain started in at the right of the company and taken each man's piece, taken out the bolt, and inspected the piece.

Q. Was any further inspection made of any members of that company?—A. Yes, sir.

Q. What was the character of that last inspection?—A. There was about three or four men were stepped out and the captain ordered the quartermaster-sergeant to go and get those cleaning rods and some clean rags, and he ran through the barrels of the guns and he found them in good condition.

Q. Was any inspection made of the ammunition of that company?—A. Yes, sir.

Q. Where was the ammunition that was issued to the men carried?—A. Ten rounds were in their belts and ten in the boxes upstairs.

Q. What was the result of this inspection of ammunition?—A. All the ammunition checked up.

Q. Where was the rest of the company ammunition?—A. In the storeroom.

Q. Was any box of ammunition opened on the night of the 13th?—A. Yes, sir.

Q. Was that verified that morning?—A. Verified that night after we returned to our barracks.

Q. What was the result of that?—A. There wasn't any of it missing. It was placed back and placed in the storeroom—covered up and placed in the storeroom.

Q. Who occupied the barracks in which you were located at Fort Brown before you got there; do you know?—A. No, sir; it was a company of the Twenty-sixth Infantry; I don't know what company, whether K Company or what company.

Q. Upon your arrival at Fort Brown did you make any inspection of that barracks?—A. Yes, sir; I went through the barracks.

Q. With whom?—A. Captain Lyon.

Q. Did you open the storeroom, or was it opened in your presence?—A. Opened in my presence; I didn't open it.

Q. Who opened it?—A. Quartermaster-sergeant, I think—the post quartermaster-sergeant.

Q. Did you find any ammunition in that storeroom?—A. No, sir.

By assistant judge-advocate:

I object to the character of this question; it is purely leading. If the counsel would ask the witness what he found in there, or in some way avoid such very leading questions, there would be no objection on the part of the prosecution.

By associate counsel:

I have no answer to make to that objection.

The accused, his counsels, the witness, the reporter, and the judge-advocates then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce that the objection is sustained.

Q. When the storeroom was opened in your presence, Sergeant Frazier, what was its condition?—A. Well, sir, I can't remember just what all were in there; but there was some property, I think, belonged to the Twenty-sixth Infantry.

Q. What was the nature of that property?—A. It was packed up in there.

Q. What articles of property were found in there?—A. I don't know, sir, whether it was tents or what it were, but I know there was some property in there—not any ammunition.

Q. Not any ammunition?—A. No, sir.

Q. Positive of that?—A. Yes, sir.

CROSS-EXAMINATION.

QUESTIONS BY ASSISTANT JUDGE-ADVOCATE.

Q. Your quarters, Sergeant Frazier, as I understood you to say, were about 400 or 500 yards from D Company barracks; is that correct?—A. Yes, sir.

Q. With reference to those first two shots you heard——

By associate counsel:

May it please the court, I object to this question. In the very first instance, the witness has said nothing at all about any shots; I purposely avoided bringing in any shots and I distinctly object to any matter not covered by his direct examination. I avoided that for a very specific reason, which I will mention to the court if desired.

By assistant judge-advocate:

I will withdraw that question. I remember his saying he was awakened and I thought he said he was awakened by some shots.

Q. You were first sergeant of D Company on August 13, 1906?—A. Yes, sir; I was first sergeant.

Q. You were discharged as duty sergeant of the company; is that correct?—A. I was discharged as first sergeant the 20th of September, 1906.

Q. And was your warrant made continuous as first sergeant?—A. Yes, sir.

Q. You reenlisted the next day?—A. Yes, sir.

Q. But you were finally discharged November 26?—A. Yes, sir.

Q. As duty sergeant?—A. Yes, sir.

Q. It was about 12 o'clock when you were awakened on the night of the 13th, I understood you to say.—A. Yes, sir.

Q. Did you look at a clock that night?—A. No, sir.

Q. On the 24th day of November, 1906, before E. T. Barbon, notary public at Fort Reno, did you state that on the night of——

By associate counsel:

May it please the court, I would like to ask the purpose of the prosecution in making any comparison between any statement previously made by the witness.

By assistant judge-advocate:

We are not, at this time at any rate, attacking the credibility of the witness; merely asking him to test his recollection of events, and not with the idea of attacking his veracity as a witness.

By associate counsel:

May it please the court, I have asked for a specific reply and have received a negative reply. If there is any specific purpose I would like to have it stated; if not, I object to the introduction of any affidavit the witness has made.

By assistant judge-advocate:

I am asking this question, may it please the court, in order to test the recollection of the witness and find out upon what facts he based his conclusions, and it is not being done with any other purpose at present.

By associate counsel:

May it please the court, I would ask the prosecution what conclusions he refers to.

By assistant judge-advocate:

May it please the court, the time at which this firing occurred has been stated by different witnesses at all times from sometime before 12 until considerably after 12. The witness on the stand just now says it was about 12 o'clock, and in a previous affidavit he stated the time very definitely, and I want to know how he was certain as to the exact time when he was awakened, as quoted in a previous affidavit. The time of the shooting has important bearing on this case as to whether it was after or before midnight, and how much before or after, and I merely want to find out how he knew just what time it was and ask him to explain to the court how it was that there is such a difference between the two times as stated.

By associate counsel:

May it please the court, the lack of accuracy of the assistant judge-advocate in making that statement is shown by the affidavit to which he calls attention. There is mentioned in that affidavit no definite statement as to the time; there is mentioned in that affidavit no inconsistent statement of time with respect to

present testimony. Now, rather than take up time with any needless remarks, I object to the introduction of any testimony with respect to a previous affidavit made by this witness on the stand, unless the prosecution can establish before the court some specific definite purpose in the way of showing that some statement made in that affidavit is inconsistent with present testimony, and I make this objection in accordance with the rulings of the court made many times on similar points.

The accused, his counsels, the witness, the reporter, and the judge-advocates then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce that the objection is sustained. Please proceed with the trial.

Q. How great a proportion of the company were already in line when you got to the front of D Company barracks?—A. I couldn't say, sir.

Q. Were half of them there?—A. I could not say whether half or not, because the men were somewhat excited and I suppose I was myself, and I couldn't say just how many were in line or how many were trying to get in line.

Q. And you couldn't say how many were armed and how many were not?—A. No, sir.

Q. Was it fairly light or dark in the immediate vicinity of the barracks?—A. It was dark, except I think there was a lantern or lamp at the corner of the barracks, at the edge of the road. I am not sure, but I think there were.

Q. That is, at the gate that leads into the post from Elizabeth street?

By counsel:

I object to that. He didn't say anything about a gate; he said corner of the barracks.

Q. Which corner of the barracks? You mean the road which passed between D and B Company?—A. Yes, sir. I am not sure whether they were or not, but I think they were.

Q. Was an accurate roll call made at any time prior to the time when the company was deployed as skirmishers along the wall?—A. Right after they were. Right after the company was formed, sir, there was a roll call.

Q. How was this roll called?—A. All particular care that could be taken, sir, to see that men I called were there, and each man answered to his own name for himself and not anyone else.

Q. This was in front of D Company or along the wall?—A. Along the wall.

Q. But I say, prior to that roll call which was called along the wall, was there any accurate roll call made?—A. No, sir.

Q. The company merely fell in and then counted fours and marched to the wall?

By associate counsel:

May it please the court, I hate to be put in the attitude of always being up here objecting to questions being asked, but if the examiner will please follow the record of this man's direct testimony he can't be mistaken in what he says. If there is anything he can shake about that testimony, it is perfectly fair, and we will not object; but to attempt to make this witness say there has been no other verification of the company except to count fours is most inaccurate and most unfair, and we object to that line of examination. I don't want to make any specific objection; I just want to call attention to that point.

(At request of associate counsel, the record was then read, page 1904 [896], first half of page.)

Q. Was there any roll call made while the company was still in front of D Company barracks?—A. No, sir.

Q. Did you accompany Captain Lyon when he passed around the line counting the men?—A. Yes, sir.

Q. Did you also count the men?—A. Yes, sir.

Q. How many men were there?—A. I disremember at the present time. At that time I knew, but I couldn't say just how many there were now.

Q. Were there any men absent not accounted for?—A. No, sir.

Q. So every absentee was accounted for. But does your recollection enable you to state how many absentees there were and where they were supposed to be?—A. Why, there were 7 men on guard, 2 on pass, 2 men slept at the quartermaster corral, 2 at Captain Lyon's quarters. That were all that were out—2 on pass, I stated that.

Q. What were the names of the 2 men on pass?—A. Corp. Charles Hawkins, Private Walter Johnson.

Q. What were the names of the men at the quartermaster corral?—A. Privates Henry and Haley.

Q. What were the names of the men at Captain Lyon's quarters?—A. William E. Jones and Taylor Stoudemire.

Q. When did these two men who were on pass finally turn up?—A. Next day; I don't know what time, but it was something forenoon.

Q. When your company is turned out ordinarily on occasions of alarm, when there is apparent necessity for them to be ready for action very soon, is it usual to count every man in the ranks?—A. We never had that experience before in the States.

Q. In the Philippines?—A. I weren't in any action in the Philippines, sir, I were in Cuba.

Q. In case of fire in the post, when the alarm of fire is given, do you stop to count the men when they turn out?—A. No, sir; we generally call the roll.

Q. Before you go to the fire?—A. No, sir; after we go to the fire.

Q. Do you know why the roll wasn't called that night when you were in front of D Company barracks?—A. No, sir.

Q. Was there any unusual disturbance going on in town at this time or in the vicinity?

By associate counsel:

I object to that question as not covered by the direct examination.

By assistant judge-advocate:

May it please the court, if, in the opinion of the court, the circumstances attending the occurrences narrated by this witness are not relevant and do not bear directly upon what he has testified to upon the direct examination, I am perfectly willing to discontinue that line of questioning and call this witness later as a witness for the prosecution, but it seems to me that in explanation of his actions that night, and of the actions taken by Captain Lyon and others, that the attending circumstances as viewed by this witness are material and are relevant, and the necessity for the action taken and the circumstances under which such action was taken, it seems to me, are relevant and material and do not exceed what has been brought out on the direct examination.

By associate counsel:

May it please the court, at the outset of the testimony of this witness it was established that he reported to his company and was acting under the direct orders of his company commander. His company commander is responsible for any action he took. This witness is simply testifying to what action was taken by the company; he doesn't know why it was taken or anything about it; it was taken because he was ordered to take it by his company commander or because his company commander received some other orders from higher authority, and if the prosecution desires any evidence from this witness touching on matters not brought out in the direct examination, we ask that they serve notice on this witness and introduce him as a witness in rebuttal if they wish to do that. We do not think it proper to interfere with the course of this defense, to cross-examine witnesses on matters not brought out on direct examination. These witnesses are brought in here to cover certain special matters; they are not supposed to cover any and all matters that come within their range for three or four months preceding or succeeding August 13.

By assistant judge-advocate:

May it please the court, this witness has testified that he was awakened about 12 o'clock on the night of August 13, 1906, and, I believe, stated that he dressed hurriedly and ran down to his company barracks. On cross-examination it is perfectly legitimate to ask him what awakened him and as to what happened during that time after he was awakened.

The accused, his counsels, the witness, the reporter, and the judge-advocates then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce that the objection is sustained. Please proceed with the examination.

Q. At what interval were the skirmishers stationed along the garrison wall?—A. I don't know, sir.

Q. Did you not pass down that line?—A. Yes, sir.

Q. Can't you tell whether they were 2 yards apart or 10 yards apart?—A. No, sir. Being dark and having very little time, I don't think I would have time to notice what interval they had, which I didn't notice. I couldn't say.

Q. When you called the roll out there at the garrison wall did you have a lantern with you?—A. Yes, sir.

Q. Will you please describe again the manner in which you called that; did you go up to each man after he replied "Here" to his name and see that he was the man whose name was called?—A. I started in to the right, calling the roll, walking on down to the left of the line to the last man, and called his name, and each man answered to his name, and that's who it was; no one else.

Q. If it was so dark that you couldn't see to distinguish the intervals between these skirmishers, how was it you can be absolutely certain that each man responded to his own name as called?—A. I beg pardon; I didn't say it was so dark I couldn't see. I said I didn't notice; I didn't take time to see what interval they had.

Q. Did you, after calling each man's name, go in the direction of the answering voice and assure yourself that the man who responded was the man whose name was called?—A. Yes, sir.

Q. Did you go over to each individual?—A. Yes, sir; I was right behind each individual man as I called his name; right in rear of him.

Q. Is not your list of the privates of the company arranged alphabetically?—A. Yes, sir.

Q. Did all those privates fall in alphabetically from right to left?—A. No, sir; it would have been impossible for them to do that.

Q. Did you first call their names and then look to see who the man was, or did you look to see who the man was and then check off his name on your roll?—A. I called each man's name; he answered; I see that was the man that answered, no one else but him; could see that myself—could see the man and know he was the man that answered.

Q. How many yards of front, to the best of your recollection and belief, did the company cover at this time along the wall?—A. I couldn't give any definite answer on that, sir.

Q. Was it 50 yards or 200 yards?—A. Oh, no, sir; it wasn't 200 yards; I am sure it wasn't that much.

Q. The best of your belief?—A. To know I was certain, they covered 50 yards. I know they covered that much.

Q. Do you know they didn't cover 100 yards?—A. No, sir; I don't know they didn't cover 100 yards.

Q. I want to clear up this point, Mr. Frazier. Did you personally go up to each man who replied "Here" to a name called?—A. Yes, sir.

Q. You walked up to that man, did you?—A. Yes, sir.

Q. And you didn't call any other name until you had walked up to that man and seen who he was?—A. I called a man's name, and when he answered I walked up there and saw that he was the man who answered.

Q. Even though he happened to be at the extreme other end of the line?—A. Yes, sir; it didn't make any difference where he was at. I called his name.

Q. How close did you have to go to a man before you could distinguish him?—A. I would have to go within 3 feet of him.

Q. So you walked up within 3 feet of each man whose name was called before you called any other name?—A. Don't understand me that I walked up to 3 feet exactly; it might have been 2½ feet, or closer.

Q. But approximately so?—A. About 3 feet or 2½.

Q. This roll call must have taken some time, did it not, if made with such accuracy and care?—A. It didn't take so long—not so long.

Q. There were about how many men in the company along the wall at that time, to the best of your recollection—50 or 60?—A. I think about 52.

Q. And if these men were at an interval of only 2 yards they would cover about 100 yards, wouldn't they?—A. Yes, sir.

Q. If they were at an interval of 3 yards, they would cover about 150 yards; is that right?—A. Yes, sir.

Q. If you went up to each man after calling his name, the names on the roll so far as the privates were concerned being arranged alphabetically, it must have taken a good deal longer than it ordinarily did to call the roll in broad daylight, did it not?—A. Yes, sir; took longer.

Q. About how long, to the best of your recollection, did it take you to call the roll at this time?—A. I don't know exactly; it might have been five or ten—well, it wasn't ten minutes—about five or six minutes.

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Q. Will you please describe again the manner in which you called that; did you go up to each man after he replied "Here" to his name and see that he was the man whose name was called?—A. I started in to the right, calling the roll, walking on down to the left of the line to the last man, and called his name, and each man answered to his name, and that's who it was; no one else.

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Q. How many yards of front, to the best of your recollection and belief, did the company cover at this time along the wall?—A. I couldn't give any definite answer on that, sir.

Q. Was it 50 yards or 200 yards?—A. Oh, no, sir; it wasn't 200 yards; I am sure it wasn't that much.

Q. The best of your belief?—A. To know I was certain, they covered 50 yards. I know they covered that much.

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Q. You walked up to that man, did you?—A. Yes, sir.

Q. And you didn't call any other name until you had walked up to that man and seen who he was?—A. I called a man's name, and when he answered I walked up there and saw that he was the man who answered.

Q. Even though he happened to be at the extreme other end of the line?—A. Yes, sir; it didn't make any difference where he was at. I called his name.

Q. How close did you have to go to a man before you could distinguish him?—A. I would have to go within 3 feet of him.

Q. So you walked up within 3 feet of each man whose name was called before you called any other name?—A. Don't understand me that I walked up to 3 feet exactly; it might have been 2½ feet, or closer.

Q. But approximately so?—A. About 3 feet or 2½.

Q. This roll call must have taken some time, did it not, if made with such accuracy and care?—A. It didn't take so long—not so long.

Q. There were about how many men in the company along the wall at that time, to the best of your recollection—50 or 60?—A. I think about 52.

Q. And if these men were at an interval of only 2 yards they would cover about 100 yards, wouldn't they?—A. Yes, sir.

Q. If they were at an interval of 3 yards, they would cover about 150 yards; is that right?—A. Yes, sir.

Q. If you went up to each man after calling his name, the names on the roll so far as the privates were concerned being arranged alphabetically, it must have taken a good deal longer than it ordinarily did to call the roll in broad daylight, did it not?—A. Yes, sir; took longer.

Q. About how long, to the best of your recollection, did it take you to call the roll at this time?—A. I don't know exactly; it might have been five or ten—well, it wasn't ten minutes—about five or six minutes.

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Q. About how long, to the best of your recollection, did it take you to call the roll at this time?—A. I don't know exactly; it might have been five or ten—well, it wasn't ten minutes—about five or six minutes.

Q. Do you know they all stayed right there in rear of D Company? Could you see them all all the time?—A. No, sir; its impossible for me to see the men when I was lying down myself with the men; I couldn't say they all stayed there; I couldn't say they all went away; I know when the company was ordered to fall in and march to the company they all fell in.

Q. Where was Captain Lyon at this time—near the gate, or did he remain with the company?—A. Captain Lyon was between the wall and D Company barracks.

Q. Was he present all the time that the company was lying there, after the order had been given to fall out, but remain in the vicinity?—A. Yes, sir.

Q. He didn't go up to the gate at all?—A. I don't remember seeing him at the gate; I know he was there; I know the company was right close to the gate, which if the captain had went to the gate he would have been with the company.

Q. But as far as you yourself were concerned you laid down and took things easily, did you?—A. Yes, sir.

Q. You didn't walk up and down the line?—A. No, sir.

Q. During this time was there not abundant opportunity for an individual man to have cleaned his rifle if he so desired?—A. Not unless he cleaned it in the dark, and I don't think a man could clean a gun very well in the dark.

Q. It can be cleaned, though, after a fashion by means of the——

By associate counsel:

May it please the court, I would like to ask the examiner to conclude that line of examination under the various rules of the court that have been made. It does not cover matter within the direct examination. If he wishes me to object to that specifically I will do it on that grounds.

Q. Did Major Combe come back with you in this patrol from town—Mayor Combe, I mean?—A. I think he did.

By counsel:

We object to that; we have not said anything about it.

Q. After you came back from your patrol and the company had fallen out in rear of D Company barracks, and was later assembled, you went directly to the barracks then and put the arms away, is that correct?—A. Marched on the company front on the company parade ground, sir; and the men were dismissed—the company were dismissed and their guns were put away at once in the gun racks and locked up.

Q. Who retained the keys to the gun racks?—A. The noncommissioned officer in charge of quarters—Corporal Powell.

Q. What time was inspection made next morning, to the best of your recollection?—A. About 6.15.

Q. About 6.15?—A. Or 6.30 probably, might have been 6.30.

By assistant judge-advocate:

Merely with the idea of refreshing the witness's memory and not with any view of attacking his credibility, I desire to read to him or show to him his answer to a question propounded by Senator Foster, as to the hour that inspection was made on the morning of the 14th. Possibly after glancing at his answer here he will be able to tell us possibly with more particularity just about the time it was, or with more accuracy.

By associate counsel:

There is no objection, if you want to find out who is meant by "he."

By a member of the court:

I object to this conversation between counsel.

By the president of the court:

The objection was to the form of the question, I understand.

By counsel:

Yes, sir.

Q. Who ran the rag through the barrel of these three or four pieces that were selected for further inspection?—A. Captain Lyon.

Q. Do you personally know the result of that? Did you see any of the rags after they were run through?—A. Yes, sir.

Q. How did they seem to you?—A. Seemed to me that they showed no marks of any powder on them.

Q. Did you look at them carefully?—A. No, sir; I didn't make any inspection of them.

Q. So you are not prepared to state whether or not they did have any powder stains on them?—A. I didn't see any on the rags.

Q. But you didn't examine them closely?—A. No, sir.

Q. You spoke about the cartridges that the men carried; did they carry 10 cartridges in their belt ordinarily and 10 in their McKeever cartridge boxes?—A. Yes, sir.

Q. And at the time of this inspection did the men have their McKeever boxes on or not?—A. No, sir.

Q. How many rounds did each man have on his person at this time?—A. Ten.

Q. Did you see with your own eyes that each man did have 10 rounds?—A. Yes, sir.

Q. And no more and no less?—A. Had 10 rounds; that was all.

Q. And there was inspection made later, I believe, in the barracks, to ascertain how many cartridges each man had in the barracks; is that correct?—A. Yes, sir.

Q. How long after this inspection held in front of the barracks was this inspection to ascertain the amount of ammunition each man had, other than that in his belt?—A. As soon as the men could get upstairs and get their boxes and belt laid both the box and the belt on the bed so the company commander could inspect the cartridges.

Q. Were both the boxes and the belt laid out on the bed together?—A. Yes, sir.

Q. So that at that time each man should have had 20 rounds?—A. Yes, sir.

Q. Did each man have that?—A. Yes, sir.

Q. Did you ever in your experience as a soldier and as a first sergeant know of men having odd cartridges in their possession in their lockers or anywhere else about barracks?—A. I couldn't answer that; I couldn't say, sir, whether I have or not, sir.

Q. Didn't you ever know of any enlisted men to ever have a few rounds more than his authorized allowance of ammunition?—A. I don't remember, sir.

Q. You have had how many years' service, Sergeant Frazier?—A. Fourteen years.

By associate counsel:

There is no objection, if you want to find out who is meant by "he."

By a member of the court:

I object to this conversation between counsel.

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Q. Didn't you ever know of any enlisted men to ever have a few rounds more than his authorized allowance of ammunition?—A. I don't remember, sir.

Q. You have had how many years' service, Sergeant Frazier?—A. Fourteen years.

Q. Were you there when the barracks were first unlocked or not?—A. No, sir; I was not there when they were first unlocked. I was with the company.

Q. There was a good deal of confusion at the time you reached D Company barracks on the night of August 13 or the early morning of August 14, was there not?—A. Confusion—what do you mean?

Q. I mean that men were running into each other in the dark or that they were unable to find things that belonged to them; that some men turned out with arms other than their own, some men not fully dressed, some men without their shoes. Is that not the case?—A. I don't remember seeing anyone without their shoes.

Q. Was there not a good deal of confusion in and about the barracks at the time you reached it?—A. Yes, sir.

Q. And there seemed to be a good deal of excitement?—A. Yes, sir; the men coming downstairs trying to get in line.

Q. Did any men go upstairs to get more clothing?—A. I don't remember; I know I went upstairs and ordered the men to get down as quickly as possible.

Q. There were no lights in the barracks?—A. Not at the time I got to the barracks; no, sir.

Q. If it was so dark outside you had to get within 3 feet, more or less, of a man in order to distinguish him, it would be pretty hard inside the barracks for each man to get all his clothes and impossible for him to be sure he had gotten his own arms. Is that not correct?

By associate counsel:

I object to the question on the ground that it is attempting to deliver an argument and the question asked the witness is not specific and not covered by the direct examination.

Q. Was there confusion in the barracks when you went there?—A. I met several coming downstairs, as I have stated before, when I got to the company.

Q. Were there any men upstairs?—A. Yes, sir.

Q. You are unable to give us an idea of how many there were?—A. I don't know, sir, how many there were.

Q. Do you suppose that a quarter of the company or half of the company were still upstairs?—A. I could not make any suggestion about that at all; I know there were some men.

Q. And you could hear them in the dark?—A. I could see them coming downstairs.

Q. I mean inside the barrack room you could hear them fumbling around trying to get their clothes or arms?—A. Yes, sir.

Q. Could you tell from the sounds you heard—the men talking and so on—at the time that they were having a good deal of trouble getting their own things?—A. No, sir; couldn't tell.

Q. The upstairs squad room has a staircase in front, as brought out on your direct examination. Is there not also one in the rear?

By associate counsel:

May it please the court, I beg your pardon as to that statement that you make use of in your examination of the witness. I challenge the statement. It is not contained in the direct examination.

Q. Did you not state on your direct examination—possibly, however, it was on cross-examination, I am not certain—that you went

By assistant judge-advocate:

Is that a question by a member? If so, on the ground that the court itself held only a short time ago that such evidence was inadmissible, I object to it as a question by a member.

The accused, his counsels, the witness, the reporter, and the judge-advocates then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce that the objection is sustained.

Q. While this inspection of guns was being made in front of your barracks about 6.30 a. m. August 14, 1906, did you notice a carriage pass along the road in front of your barracks? If so, state, if you know, who were in that carriage.—A. I don't remember whether there was any passed there or not, sir.

MINGO SANDERS, a witness for the defense, was duly sworn and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please state your name, your residence, and present occupation.—A. Mingo Sanders; late first sergeant of Company B, Twenty-fifth Infantry. My residence now at Washington, D. C. I am here at Sam Houston now.

Q. Have you any occupation at present?—A. Not any, sir.

Q. Do you know the accused? If so, state who he is.—A. Maj. Charles W. Penrose, of the Twenty-fifth Infantry. Major of the First Battalion.

QUESTIONS BY THE ACCUSED.

Q. Sergeant, how long have you been in actual service?—A. About twenty-five years, six months, and seven days.

Q. How much service have you for retirement?—A. One year, five months, and twenty-three days to retire in, with double time.

Q. That is, counting your war service double, you could retire if you could complete one year, five months, and——A. Twenty-three days; yes, sir.

Q. Where has your service been, Sergeant, in what regiments?—A. In the Twenty-fifth Infantry, Company B, the whole entire term of enlistment.

Q. How long were you first sergeant of B Company, Sergeant?—A. I was appointed first sergeant of Company B the 3d of February, 1900, at Subig, P. I.

Q. What portion of your service previous to that was as a noncommissioned officer?—A. I was appointed corporal about the 1st of September, 1883; I was appointed sergeant the 1st of May, 1891.

Q. Then, you were continuously a noncommissioned officer from the time you were appointed a corporal?—A. Yes, sir.

Q. You served with your regiment in Cuba and in the Philippines, did you, Sergeant?—A. Yes, sir.

Q. And went down with the first expedition to Cuba?—A. Yes, sir.

that list this morning. There were four who were to leave Washington tomorrow, and if there is no objection we would like the judge-advocate to request that those witnesses be hurried along as much as possible. That list, having just been found, is Howard, McCurdy, Ash, and Madison.

The judge-advocate:

If the counsel will kindly write a telegram, I will see that it goes on the wire at once.

Counsel for the accused:

If we may have just a few minutes' recess, we will formulate one.

The presiding officer:

Very well.

The court then took a recess until 2.15 p. m., at which hour the members of the court, the judge-advocates, the accused, his counsel, and the reporter resumed their seats.

MINGO SANDERS, a witness for the defense, was reminded that he was still under oath, and further testified as follows:

DIRECT EXAMINATION CONTINUED.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. Sergeant, were you stationed in Brownsville in the month of August last?—A. Yes, sir.

Q. You were there on the 13th of August, were you?—A. Yes, sir.

Q. Did you receive any unusual order that afternoon?—A. I received orders about between 4 and 5, I judge; it might have been a little sooner or later.

Q. What were those orders, Sergeant, and whom did you receive them from?—A. Lieutenant Lawrason. Lieut. George C. Lawrason came over to the company and asked me whether there were any men on pass or not. I told him, "No, sir." He said, "Send me two responsible noncommissioned officers." I sent him Sergt. Walker McCurdy and Corpl. Wade H. Watlington; he gave them instructions "to go all over the town; if you see any men that belong to B Company, tell them to come to the quarters at once," and stated to me to publish on retreat that no men would be allowed in town after 8 o'clock. I told him, "Yes, sir," and I performed that part of the duty; at retreat I published the order by orders of Major Penrose.

Q. Sergeant, where did you live at Brownsville—with the company, or were you a married man?—A. I was married; I lived about 400 or 500 feet, I judge, a little east of the barracks, in the noncommissioned officers' quarters.

Q. That was in the same row of quarters where the first sergeant of D Company lived?—A. Yes, sir.

Q. Who else lived there, if anybody?—A. Sergeant Brawner lived in the center quarters; I lived on the left, Frazier on the right, and Brawner in the center of C Company.

Q. Now, were you waked up during the night of August 13 and 14? If so, about what time?—A. I judge about 12 o'clock. Mrs. Brawner was hammering on the door; my wife woke a little before [illegible] and she claimed there were a fire out here. My wife run to the

Q. You are positive about that?—A. Yes, sir.

Q. Might not there have been Krag-Jörgensens?—A. No, sir.

Q. You are sure that they were Winchesters, and I believe you said there might have been some Mausers?—A. They were mixed arms, sir.

Q. Though you are sure there wasn't any Springfields, model 1903?—A. Yes, sir.

Q. Can you tell the difference in the sound of a bullet when it comes through the air—whether it is a lead bullet or steel-jacketed bullet from a high-power rifle?—A. The steel-jacketed have a keen sound.

Q. About what caliber were these Winchester bullets that came over your head? Were they 30–30, 38–55, or 40–60, or what?—A. Well, I judge they were all the way, I will say, 30–30 to a 40–60.

Q. Which kind were there most of?—A. Well, I couldn't tell exactly which kind the most was from.

Q. Well, about how many 30–30 Winchesters do you think there were?—A. I couldn't tell that exactly.

Q. Do you think there were five, or what number?—A. I know there were mixed arms.

Q. Were there any pistol shots among these?—A. There were pistol shots in the town.

Q. Were any of these bullets that came over your head pistol bullets?—A. I couldn't say exactly, but I suppose there was .45's.

Q. Can you distinguish the class of firearms that were used in that shooting? Can you distinguish between the report of different kinds of rifles and pistols?—A. There were mixed arms fired, and I could distinguish the different sounds of the rifles.

Q. Now, did you hear a report among those that sounded like a Remington?—A. There could be a Remington amongst them.

Q. Did you or did you not?—A. There was some sound just like a Remington; had a very broad sound.

Q. And you were sure there were some that sounded like Mausers?—A. Yes, sir.

Q. And those are different from Remingtons in sound?—A. Yes, sir. We are speaking of the report of the gun now, sir.

Q. Yes; but with reference to these bullets, could you tell the difference between a Remington bullet and a Mauser bullet coming through the air? That is, the old style lead Remington bullet?—A. Yes, sir.

Q. You can tell the difference between a high-power bullet—rather, a bullet fired from a high-power rifle—and one from an ordinary hunting rifle using black powder?—A. I answer that question again, sir——

Q. You want to answer it again?—A. I previously answered that question; yes, sir.

Q. Now, the bullets that are shot from a Winchester rifle and a Remington rifle—do they make a different sound?—A. The Remington has—yes, sir.

Q. What is the difference?—A. The difference is that the Remingtons have more of a louder sound than the Winchesters do.

Q. Doesn't it depend upon the caliber of the Winchester?—A. That is as I stated before; it depends on the caliber of the gun.

Q. I will not read to you any extract at present, but I will merely ask you whether you ever informed Senator Foster, when you were testifying before the Senate committee last month, that you could readily tell a Mauser or a Winchester or a Remington? This is in answer to a question as to whether you could distinguish the firearm from which a bullet is fired by the sound of the bullet itself.

Counsel for the accused:

I am going to object to that, unless he reads the whole answer, and then he must state specifically what he intends to do with it. We object to any quotation that is not a complete quotation so as to give the witness a full knowledge of what you are going to do. In order to get at that, we will object to their going into the Senate document at all. It is not a part and parcel of this investigation.

The assistant judge-advocate:

The counsel has very truly remarked that the Senate document is not a part and parcel of this, but this document contains many statements—in fact, about 30 and 40 pages of questions and answers—and the questions were asked to this witness and the answers were made by him about three weeks ago, and if it can be shown that he makes statements at present decidedly different from those he made two or three weeks ago, and if they differ from those he made at that time, it appears to me that it is absolutely relevant, and I request a ruling of the court as to whether or not the prosecution is to be allowed to prove previous inconsistent statements and to question the witness upon them in order to test his veracity.

Counsel for the accused:

Before this is ruled upon I would ask that the witness be read what he expects to disprove, in order to show an inconsistent statement in regard to it.

The presiding officer:

This is a former statement—this touches the former statement made by the witness?

The assistant judge-advocate:

Yes, sir.

Counsel for the accused:

We ask to have the present record read, and that the counsel state what he expects to show, an inconsistent statement concerning——

The assistant judge-advocate:

Does the court desire that I read some of these questions and answers?

The presiding officer:

Yes, sir.

Counsel for the accused:

What we want now is to have our own record read and have the judge-advocate state what statement is inconsistent that he expects to disprove.

The presiding officer:

What statements he expects to find at variance?

Counsel for the accused:

Yes, sir.

The presiding officer:

Please read the direct testimony that you desire to touch upon.

Assistant judge-advocate:

I wish to read to the witness the question and answer that he made before the Senate committee with reference to his identification of the sound, or, rather, the identification of these bullets by the sounds they made as they whistled through the air, and to merely ask him whether or not he made such statements.

Counsel for the accused:

Now, may it please the court, in order to get it in the record, I will state that as we conceive the law to be, I will read to you from McKelvey on Evidence, under the subject of "Scope of cross-examination." (Counsel here read from page —, beginning with the words "the doctrine generally adopted by the American courts," and ending with the words "confined to the methods of the direct examination."). Now, under that rule, and this being clearly expert testimony and not brought out by the direct examination, he is bound by what that witness stated on direct examination and can not dispute it by other statements. That is our contention. We repeat, however, that we want to know what particular statements in direct examination he expects to disprove.

The assistant judge-advocate:

May it please the court, I do not think that the prosecution has touched upon any new matters. They merely have asked the witness to describe with more particularity the bullets that he heard that night, and which he claimed before the Senate committee that he was able to identify and that he was certain that they were particular kinds of bullets. Now, it is a small point, but it tends to show that this witness has certainly very wonderful powers of observation.

Counsel for the accused:

We object to that. Now, may it please the court, that is a discussion that is going beyond the bounds. It is criticising the witness on points on which we claim he is his witness, and if he wants that brought out he can get anybody that served in the Philippine Islands; they were able to distinguish the sound of the Remington from the Mauser and the Mauser from the Krag. There wasn't a day that we didn't hear that, and we again ask that we be informed what specific statements he expects to disprove.

The assistant judge-advocate:

May it please the court, I don't see how I can be any more definite than I have been in this matter as to what particular statements of this witness I intend to throw a little more light upon. The record is here.

(At request of the assistant judge-advocate the reporter read the question objected to, as follows:

"Q. I will not read to you any extract at present, but I will merely ask you whether you ever informed Senator Foster, when you were testifying before the Senate committee last month, that you could readily tell a Mauser or a Winchester or a Remington? This is in answer to a question as to whether you could distinguish the firearm from which a bullet is fired by the sound of the bullet itself.")

Q. I would like to add to that question this: Your complete answer is "It was——"

Associate counsel for the accused:

I object to that. Any correction that you want to make in that is perfectly legitimate, may it please the court. I think that is admissible, but anything further pending this objection being ruled upon by the court is inadmissible.

The assistant judge-advocate:

The only thing, may it please the court, was that I hadn't quoted the witness's entire answer to that question. If the defense is willing to let it go as it is, I am perfectly willing.

Counsel for the accused:

May it please the court, may we have the record read as to what specific statements he expects to show were inconsistent. I think we are entitled to that.

Q. Who was it uttered these words or gave this command?—A. Lieutenant Grier.

Q. You are sure it was Lieutenant Grier and not Captain Lyon or Lieutenant Lawrason or some one else?—A. I am sure it was Lieutenant Grier.

Q. And you heard him give the order to break open—quote that order again; what were his exact words?

Associate counsel for the accused:

May it please the court, I object to this examination, on the grounds that it is not covered by the direct examination. The assistant judge-advocate has induced the witness to say that he heard some officer say something out there, and that he was Lieutenant Grier; now, he is going into the cross-examination on what Lieutenant Grier said and as to whether or not this witness is sure he said it. That is an example, may it please the court, of the attempt to go into collateral matters, and it is going to extend this investigation to an unreasonable length, and I object to it on that ground.

Assistant judge-advocate:

The reason for asking that question was that, from Lieutenant Grier's testimony, as I remember it—I haven't seen the record lately—he himself stated that he gave no orders as to the breaking open of these gun racks, as I remember it, and in reading over this Senate document I noticed where this witness had stated he heard Lieutenant Grier give that order.

Counsel for the accused:

Then, may it please the court, the proper way to dispute that is by this witness as his own and not on cross-examination, and therefore we object to it.

Assistant judge-advocate:

It seems to me that if the fact is brought out by the defense that a witness was awakened at a certain time, under certain conditions, ran by a certain route to a certain place, and there found things in a certain condition, as stated by him that things happened, practically at the same time, and that formed a part of the whole, are not collateral, but are pertinent and relevant.

The presiding officer:

Do I understand that this question you asked is upon that or upon the Senate examination?

Counsel for the accused:

It is from the Senate examination, may it please the court, and it is what we are objecting to. There are 60 pages of the Senate matter that the counsel is using as a basis for cross-examination, which is improper. The only basis of cross-examination is what this witness has testified to on direct examination, and it is what the court has ruled on as being inadmissible.

The assistant judge-advocate:

May it please the court, I think there is no difference whatever in my using the testimony of this witness as given before the Senate Committee a few weeks ago; I think there is no difference in the propriety or impropriety of it than there was of the other side using previous statements made by witnesses of the prosecution. It is six in one and half a dozen of the other, and they are all previous statements; and if there are inconsistent statements therein, the witness can be asked about them; and if, in reading over those statements, something is learned that throws light on other points and if the entire subject is covered by the defense in its direct examination, it seems to me that the prosecution has a right on cross-examination to go into those things and clear up some of those points.

The presiding officer:

The ruling of the court the other day was that it was pertinent to use such evidence in order to clear up, I believe, any point that was obscure, was it not?

Q. Those were the only four men absent at that time?—A. Yes, sir.

Q. How many men were there on guard from B Company that night?—A. Seven.

Q. So that altogether there were eleven men absent from the company; is that correct?—A. That is correct, sir.

Q. Were any in the hospital?—A. Two sick in the hospital.

Q. So that makes 13?—A. Thirteen men were absent, exactly; 7 on guard, 4 absent is 11, 2 sick in the hospital, 13.

Q. Any in the guardhouse?—A. None in the guardhouse.

Q. Any on detached service?—A. One on detached service, Artificer Jones, but he wasn't present at Brownsville.

Q. Did I understand you to say that when B Company was marched out and took up its position along the wall, that at that time D Company, under Captain Lyon, was making its patrol uptown?—A. Yes, sir; going out to patrol uptown.

Q. Were they just going out or had they gone out?—A. I think they were outside the gate in the main street going up the street. I am not positive about that, but I think so.

Q. Was C Company still drawn up in front of its quarters when you left the front of B Company quarters with B Company?—A. I don't know, sir, anything about C Company after I passed it.

Q. Which way did the company—that is, Company B—march from the front of the barracks to the wall? Did it pass by the east or the west end of B Company barracks?—A. The west end.

Q. So that you would have seen Company D if it had been between B and D Company barracks or right near D Company, would you?—A. I am not positive about D Company, about its exact whereabouts.

Q. They were not, however, right close to the lights at the garrison gate or had they gone outside?—A. I do not know, sir, the exact whereabouts of D Company.

Q. What was the basis of your statement that you believed they had gone uptown on this patrol?—A. I am sure of this much, that D Company did go and patrol the town; I know that to be a fact that they did do that.

Q. Did you assist in issuing ammunition that night?—A. No, sir; I issued the ammunition, sir.

Q. Was this box of ammunition a full original package?—A. Yes, sir; 1,200 rounds in packages.

Q. There are 20 bandoleers, I believe, in each box, and there are 60 rounds in each bandoleer?—A. About 20. There is 1,200 to the box, about 20 bandoleers; there are 60 rounds to each bandoleer.

Q. How many bandoleers were left in this box after you finished? Did you notice?—A. I didn't notice.

Q. Whether it was half full or only 2 or 3 left in it?—A. I don't know, sir; I didn't notice to see how many were left in it.

Q. When you first went to your room at the barracks and got your rifle, how many minutes was that after the call to arms?—A. I guess about five or six minutes—something like about ten minutes total. I suppose from eight to ten minutes entire time.

Q. That is the entire time from the time you first heard call to arms until——A. Until I completed calling my roll.

Q. Did you ever state to Senator Warner in reply to the question, "You first went to your room and got your gun? Answer. I did,

point was brought out on direct examination, that he reported having heard the whistling of the bullets to Major Penrose very soon after the firing was over——

Counsel for the accused:

The page, please?

The assistant judge-advocate:

Three hundred and fourteen. And what is shown in these two questions and answers, though it is not entirely clear on the subject, still it seems to me to contradict that statement.

Counsel for the accused:

I have read, may it please the court, that evidence very fully and fairly, and we maintain that there is absolutely no conflict in his statement whatever, and we are perfectly willing to have the court examine the document to see that we are stating the thing fairly. The witness did state that he reported to Major Penrose, and so stated there, perhaps, but there is no conflict in it whatever. If the whole examination of that witness at that time is examined, I think, by the prosecution, they will admit my statement is correct.

The assistant judge-advocate:

May it please the court, in these two questions and answers there is no statement that this was the first report he made to Major Penrose, but from the line of the examination and from questions that appear later, the natural inference was, or is, it seems to me, that the first time the witness reported the hearing of these bullets was when he reported to Major Penrose the next day, and not that evening. I can find nothing in his testimony to show that he reported the facts to Major Penrose on or about the time of the shooting, and the only time that I can find in here when he claims to have reported this, other than before the Senate committee, or, as stated in these two questions, some time after the shooting.

Counsel for the accused:

I challenge the gentleman to read a single line in that to show that this witness stated he made any such statement the next day—a single line.

The assistant judge-advocate:

With the permission of the court, I will read these two questions and——

Counsel for the accused:

We object to it being read and ask a ruling of the court.

The assistant judge-advocate:

May it please the court, I scarcely see how I can produce the single line unless the court permits me to read the questions and answers.

The presiding officer:

The question is that they are objecting to it being read so that it won't go on record until the objection is ruled on.

The assistant judge-advocate:

With the permission of the court, I will show this to counsel.

The presiding officer:

Very well.

The assistant judge-advocate:

May it please the court, the witness has just made a statement with reference to the first occasion he reported this to Major Penrose. I can find nothing in his testimony or I can find no claim made by him in his testimony before the Senate committee or elsewhere that he made the report at such time. This is the first time, so far as I know, that it has been brought out, and from the

Counsel for the accused:

Now, may it please the court, that is the contention of the defense; he never was asked that question, and the judge-advocate, may it please the court, has started to inject as a part of this time a question that don't, and clearly don't, relate to that at all, and it is manifestly unfair to the witness.

The assistant judge-advocate:

May it please the court, it all depends on the interpretation of these two questions and as to whether the word "then" in the second question relates to a time stated in the first question or not, and I respectfully request a ruling of the court as to whether or not the prosecution is to be permitted to read these two questions and their answers in open court and ask the witness whether he didn't make that statement; and if he acknowledges that he did and can explain the seeming discrepancy, well and good, but I think at any rate we are entitled to have them read.

The accused, his counsel, the judge-advocates, the reporter, and the witness then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce the decision that the objection be not sustained. The questions and answers may be read.

The assistant judge-advocate:

In order, may it please the court, to make this thoroughly plain, instead of just reading the preceding question to the one that has particular reference to Major Penrose and his report, I will read three or four questions preceding that, in order to enable the court to get the context.

Q. Now, Sergeant, I want to ask you whether, when you testified on the date mentioned, before the Senate committee and were questioned particularly by Senator Warner, whether or not the questions which I am about to read were asked you and whether you answered them as I read them to you——A. I would like to understand you thoroughly, sir. The question that you read——

Q. I will read you the series of questions and answers propounded on pages 313 and 314 of the report of the Senate committee on the "Affray at Brownsville," which is believed to be a true copy of your questions and answers at that time. Then I will ask you whether those questions are correctly given.—A. I would like for you to read each question and then ask me.

Q. Very good. "Q. What was the impression upon your mind at the time as to who did the shooting? Answer. The impression on my mind at that time about the shooting, I don't know what it would be; I couldn't think any one thing, because the shooting were all mixed arms——"

Associate counsel for the accused:

May it please the court, the ruling of the court is that these two questions and answers that the assistant judge-advocate asked to read that he be permitted to read them and not that he be permitted to read, beginning at the top of another page, a lot of questions and answers that were asked him and answered by him. It isn't an examination of Senator Warner on certain statements he has made before other committees, but it is a sort of disjointed examination on various statements that he has made. The request of the judge-advocate was that he be permitted to ask him two questions on page 314 and that the answers be read, and that it be received by the court to enable the court to make up its mind to see whether there is any inconsistency between those questions and the testimony he has given to-day; and I ask that he be limited in it in accordance with the ruling of the court.

Q. Did you make out an affidavit, or did you sign an affidavit about the 24th of November, 1906, at Fort Reno, that was taken before or with the assistance of a member of the Constitution League?

Counsel for the accused:

That has nothing to do whatever with this unless he can show that it has some purpose—if he can show some recognized legitimate purpose in bringing it out, we won't object to it.

The assistant judge-advocate:

If the court desires me to announce the purpose of this, I wish to state that the witness has testified on direct examination that he made this report with reference to the bullets whistling over his head to Major Penrose very shortly after the close of the shooting; the next time there is any record of his having made any statement of this kind——

Counsel for the accused:

We object to that. Now, may it please the court, he stated distinctly that he has made no other report to any person, and if the purpose is to dispute that statement we will not interpose any objection, but we do object to the injection of any other statement, unless it is for the purpose of contradiction.

The assistant judge-advocate:

It seems to me just as important to find out from a witness why he omitted to state certain essential facts when he was being questioned on a matter at a number of different times, why, I repeat, he neglected to state these facts at those times when he was given opportunity to state them, and when in one instance, at least, and I believe two, he knew that the investigations were friendly investigations and were being made with a view to presenting the soldiers' side of the affair.

Counsel for the accused:

We object to any further argument on that proposition. We are entitled to know his purpose; if it is for the purpose of contradiction it is admissible.

The assistant judge-advocate:

It is for the purpose of endeavoring to get from the witness an explanation as to why he never made any claim about hearing bullets going toward the direction of the post at any time between the time when he now claims he reported to Major Penrose and a couple of weeks ago, when he testified before the Senate committee.

Counsel for the accused:

We object to it.

The accused, his counsel, the judge-advocates, the reporter, and the witness then withdrew and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce the decision that the objection is not sustained.

Q. (Question was read by the reporter.)

A. I did sign an affidavit.

Q. Did you state anything in that affidavit with reference to having heard bullets whistling overhead while you were on the way from your quarters to the barracks?—A. No, sir.

Q. Did you ever state to any one the fact of having heard bullets whistle overhead, other than the time you reported to Major Penrose——A. No, sir.

Q. On the night of August 13, and the day that you testified before

REDIRECT EXAMINATION.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. Sergeant, tell the court under what circumstances this affidavit by the so-called Constitution League was taken.—A. When I were about to leave the post there was a man came over to the barracks and said, "They want you over at D Company;" I said, "For what;" he said, "There is a lawyer over there that wants to see you;" I said, "Me," and he said, "Yes;" I said "You go back and tell him that I haven't got time; I have got to leave on the 1.50 train;" I think that is the time; "I have bought my ticket and I have got my wife packed up and ready to leave, and I am going to leave." And he went away and came back and said, "Come over a few minutes; I want to see you," and I got over there and he said, "I want to take your affidavit;" I said, "I haven't got time to fool with that; you will have to see me later;" he said, "It won't take long," and I said, "Do it," and I said, "I will state it in a brief manner," and before I got through my wife was waiting at the door and hollering at me to come on and I told them "good-bye," and signed a place for them to attach the affidavit on it, and left. That was my reasons.

Q. You were examined by others, were you not?—A. Yes, sir.

Q. By General Garlington?—A. Yes, sir.

Q. Did he ask you anything about the case at all?—A. He asked me—he started in a general conversation way about my soldiering; when I enlisted, captain, time, name, etc.; where I was born, etc. Then he asked me if I knew anything, know any soldiers that were implicated in the case, or could give any information to the fact. I told him no.

Q. Did he ask you what the facts were that you knew at all?—A. No, sir; he only asked me what I have stated.

Q. Did any other officer that interviewed you ask you for all the facts?—A. No, sir.

Counsel for the accused:

We have no further questions.

QUESTIONS BY THE COURT.

Q. How many bullets did you actually hear passing through the air at the time you have testified, to the best of your knowledge?—A. I said about 150 or 175, as near as I could roughly——

The presiding officer:

The question refers to bullets you heard whistling over you.

Q. (Question repeated.)

Counsel for the accused:

Does that refer to the time he was on the board walk?

The presiding officer:

I suppose so.

A. I don't know, sir; I guess it was about 12 or more.

(Excused.)

THE PENROSE COURT-MARTIAL—Continued.

PART 7.

MARCH 13, 14, AND 15, 1907.

MEMORANDUM FOR THE SECRETARY OF WAR.

Please correct Penrose court-martial record as follows:

In lieu of the second to the bottom line on page 1983, insert the following: said, "It won't take long," and I said, "All right, if it will do you any good," and I.

Respectfully, CHAS. E. HAY, Jr.,
Captain, Acting Judge-Advocate, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., March 13, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocate. The accused, his counsels, and the reporter were also present.

The reading of the proceedings of March 12 was dispensed with.

THOMAS J. GREEN, a witness for the defense, was duly sworn and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please state your name, residence, and present occupation.—A. Thomas J. Green; residence, Nokesville, Va.; my occupation, I was working at a packing house, Chicago, Ill., last.

Q. Do you know the accused? If so, state who he is.—A. Charles W. Penrose, major, Twenty-fifth Infantry.

QUESTIONS BY THE ACCUSED.

Q. You have had service as a soldier?—A. Yes, sir.

Q. How much service have you had?—A. Fifteen years, one month, and twenty-six days.

Q. And in what organization has that service been?—A. In Company D of the Twenty-fifth Infantry.

Q. All of it?—A. Yes, sir.

Q. And did you hold any office in that company? If so, tell the court, aside from that of private.—A. Private, artificer, corporal, sergeant, and quartermaster-sergeant.

Q. How long were you artificer?—A. I couldn't say exact number of years, sir; a good while.

Q. Do you remember how long you were a corporal?—A. I were a corporal three years and some days.

Q. And were you continuously a sergeant after that?—A. Yes, sir.

Q. Were you stationed with your company, D, at Fort Brown, in Brownsville, Tex., last August?—A. Yes, sir.

Q. Do you remember when the company arrived at Brownsville?—A. I don't remember the exact date, sir.

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[a] See page 933, *ante*, fifteenth line from top.

Q. Where did they seem to be to you?—A. The flashes I saw was over the stone wall and near the telegraph office.

Q. That was the first flashes you saw?—A. Yes, sir.

Q. Did you see any subsequent flashes of guns?—A. Yes, sir.

Q. Where were they?—A. They were still further up the street; the same street.

Q. What street do you mean? Elizabeth street, or the one that runs parallel to the garrison wall?—A. The one that runs along the garrison wall.

Q. Up toward the oil house or sink of B Company—in that direction, I mean?—A. Yes, sir; up in that direction, or further on.

Q. What did you do then, Sergeant? You said you commenced to dress; what did you do?—A. After I got dressed, sir—before I got dressed I heard call to arms going, and then I started upstairs for my gun.

Q. Did you meet anyone on your way upstairs?—A. Yes, sir.

Q. Who was it, and where?—A. The first two men I met was Corporal Thornton and Artificer Newton, and at the door I met Captain Lyon—where the steps goes upstairs; the front door.

Q. Did you have any conversation with Captain Lyon?—A. Yes, sir.

Q. Tell the court what it was. I mean at that particular time.—A. Yes, sir. He asked me who were doing this shooting over here, and I told him I didn't know who it was, and he says, "Where is the noncommissioned officer in charge of quarters?" I says, "I think he is upstairs, sir." He says, "Well, have the men to turn out and fall in in front of the quarters as quickly as possible."

Q. Did you tell Captain Lyon at this time anything about the flashes you saw?—A. Not at that time I didn't

Q. When did you tell him about it, if at all?—A. The next morning.

Q. Did you fall in with your company, Sergeant?—A. Yes, sir.

Q. Did you have any orders about ammunition that night; if so, from whom?—A. Yes, sir; I had orders from Captain Lyon.

Q. What were they?—A. He ordered me to go to the storeroom and get a box of ammunition and take it in the orderly room and open it, and not to issue any until I got orders from him.

Q. Did you issue any of that ammunition you opened?—A. No, sir.

Q. What did your company do after they fell in, Sergeant?—A. The company was marched around in between D and B Company quarters and deployed as skirmish line along the stone wall, on the left-hand side leading out to the town, in rear of D Company quarters.

Q. When did this firing cease, Sergeant?—A. It ceased just as the company moved off.

Q. Just as the company moved off around in front, as you have just stated?—A. In rear, sir.

Q. I mean around in rear of the barracks and along the wall?—A. Yes, sir.

Q. How long did you remain there along the wall?—A. I couldn't say, sir, how long, but it was quite a while.

Q. Then where did the company go?—A. The company then patroled some streets in the town.

Q. How many cleaning rods did you have in the company, Sergeant?—A. Four.

Q. And they were kept where?—A. In the barracks, sir.

Q. Who was responsible for them; do you know of your own knowledge?—A. The chief of section; that is, the sergeant of each section.

Q. Did any other persons than the ordinary persons that fell out for drill have their guns inspected that next morning, Sergeant?—A. Yes, sir.

Q. Who?—A. The company cooks.

Q. They were brought out and their guns inspected too, eh?—A. Yes, sir.

Q. Inspected in the same way?—A. Yes, sir.

Q. Do you know what kind of ammunition was issued to your company?—A. Yes, sir.

Q. What kind was it that was in the hands of the men?—A. The ball cartridge, sir.

Q. The ordinary ball cartridge?—A. Yes, sir.

Q. And they used those for guard purposes there while at Brownsville?—A. Yes, sir.

Q. That is, up to the night of the 13th and 14th of August; that's what I mean.—A. They used them all the time up until I were discharged.

Q. Did all the men in your company have the allowance of ammunition?—A. All but two, sir.

At this point the court took a recess until 10.30 o'clock a. m., at which hour the members of the court, the accused, his counsels, the witness, the reporter, and the judge-advocates resumed their seats.

Q. Who were these two men that did not have allowance of ammunition, Sergeant?—A. Private Gill and Musician Jones.

Q. Did they have this allowance when they came to Brownsville?—A. No, sir.

Q. Did they have their allowance issued to them at any time previous to August 13?—A. No, sir.

Q. Was there a check up of your ammunition at any time on the 14th—the ammunition on hand?—A. No, sir.

Q. When was this made, Sergeant?—A. When the men were to be discharged.

Q. Did the captain of your company make any effort to find out whether the men had their proper amount of ammunition on the 14th, the day after the shooting?—A. Yes, sir.

Q. Were you present, and assisted at that?—A. Yes, sir.

Q. Was this ammunition found to be correct?—A. Yes, sir.

Q. Do you know whether the ammunition in the storeroom was verified or not by Captain Lyon the next day? I mean of your own knowledge.—A. Yes, sir.

Q. Were you present when he made this verification?—A. Yes, sir; because I had the keys to the storeroom.

Q. And you say the ammunition was found correct?—A. Yes, sir.

Q. In what shape was your ammunition, Sergeant, that wasn't in the hands of men?—A. In boxes; sir.

Q. Had any of it been opened since you left Niobrara?—A. No, sir; had three full packages.

Q. Three full original packages?—A. Yes, sir.

By counsel:

The witness has answered that question—that he doesn't know—that it was further up the street, and we object to it. We intend our remarks for the court.

Q. You saw the flashes of these guns, you say?—A. Yes, sir.

Q. How many flashes did you see?—A. I didn't count them, sir.

Q. About how many did you see, 2, or 4, or 10, or approximately to the best of your recollection, how many did you see?—A. I couldn't tell how many; I saw several flashes.

Q. Can you state about how many you saw, whether there were 2 or 5 or what?—A. No, sir.

Q. You are quite positive these were all outside the wall?—A. Yes, sir.

Q. Did you hear any voices calling out at that time?—A. No, sir.

Q. No voices at all, or any yelling?—A. No, sir.

Q. And you were in position to have heard if anyone had been calling from the vicinity of the gate in a loud tone of voice, were you not?—A. Yes, sir; I could have heard.

Q. Your windows were open?—A. Yes, sir.

Q. And your room is on the ground floor?—A. Yes, sir.

Q. And distant about how far from that gate approximately, how many yards?—A. I judge it to be about 25 or 30 yards, maybe more.

Q. When you heard the first shot did you get right up then, or did you wait to hear if any more were coming?—A. I got up then, sir.

Q. You got up then?—A. Yes, sir.

Q. And then with reference to these first shots and your movements immediately thereafter, what time did call to arms go?—A. Call to arms went as soon as those other shots were fired.

Q. About how many seconds after the first shot?—A. I couldn't tell, sir.

Q. Can't you give the court some idea, whether it was ten seconds or twenty seconds?—A. It was a very short time; that is all I can say about it.

By counsel:

He didn't say almost immediately——

By assistant judge-advocate:

I am asking him.

By counsel:

We object to your asking that question in that way, may it please the court; he can fix the time in any legitimate way, but when the witness says he can't tell, we object to him saying "immediately."

Q. About how many seconds was it, can't you give us any idea at all?—A. No, sir.

Q. Did you hear the call to arms go before you commenced putting on your clothes or not?—A. I was getting ready to put on my clothes and call to arms went, sir.

Q. And you got out of bed right after the first shot?—A. Yes, sir.

Q. Did you hear anyone, at any time while you were getting dressed, call out from the vicinity of the gate?

Q. Were all the men present at this inspection?

By counsel:

We object to that. This witness is not in position to know it, and it wasn't brought out in direct examination.

Q. In your company, do the men on extra and special duty habitually turn out for drill?—A. Yes, sir.

Q. So that when drill call sounds the extra and special duty men get their arms and report?—A. Yes, sir.

Q. You stated that when you arrived at Brownsville and entered a storeroom in the barracks occupied by Company D that you saw a lot of cast-off clothing—khaki clothing—there, and some lamp chimneys, etc. Was this clothing hung up on the wall or thrown on the floor?—A. On the floor, sir.

Q. Piled up there?—A. No, sir; scattered around.

Q. Did you pick up this clothing and examine it?—A. Examine? No, sir; I did not.

Q. Did you superintend in person the cleaning out of that room?—A. Cleaning out these two rooms—the room I slept in and the storeroom.

Q. Did you do it yourself?—A. No, sir.

Q. Were you present all the time it was being done?—A. Yes, sir.

Q. Did the men have only the steel-jacketed .30 caliber ball ammunition?—A. Yes, sir; that's the onliest ammunition that was issued to them.

Q. Do you know of your personal knowledge that no man in the company had any other ammunition than that?—A. I couldn't say, sir.

Q. Do you know of your own knowledge that no man in the company had any of the reduced range or guard cartridges?—A. Not of my company, he didn't, sir.

Q. You state that positively, that no man had any of this other ammunition?—A. No, sir; because none of it had ever been opened or issued.

Q. Didn't you use it at Fort Niobrara?—A. No, sir.

Q. Never?—A. No, sir.

Q. You never had had any of that with this rifle?—A. No, sir.

Q. You say that the ammunition was checked over next morning and found correct?—A. Yes, sir.

Q. As quartermaster-sergeant, you knew about how much ammunition was on the company returns—ordnance returns—did you not?—A. Yes, sir.

Q. In your company was every round, whether in the storeroom, in the men's belts and boxes—was every round accounted for on the ordnance return?—A. Of what time do you mean?

Q. At this particular time.

By counsel:

I don't believe this witness knows anything about the ordnance return. I would like it to be shown that he does before that question is asked. If he makes out the returns, that's one thing; if he doesn't, we shall object to the question.

Q. Do you have anything to do with the ordnance returns?—A. No, sir; I have nothing to do with the making out the ordnance re-

By counsel:

We object to that. The judge-advocate is again misquoting the record.

By assistant judge-advocate:

May it please the court, if I am misquoting the evidence it is not an intentional act on my part. I thought the witness had so stated, but to find out for certain I shall ask him again. It will save time, rather than looking back and trying to find that particular question and answer.

Q. Did you issue to Private Gill any ammunition between the date of your arrival at Brownsville and the 14th of August?—A. No, sir.

Q. Do you know that he was without ammunition during this time?—A. He reported to the first sergeant the first time he mounted guard that he didn't have any ammunition; he lost it on his way to Brownsville from Niobrara.

Q. So he mounted guard without any ammunition?—A. He got ammunition from other men to mount guard.

Q. He borrowed it from other men?—A. Yes, sir.

Q. There is one other man you stated was also without ammunition; is that correct?—A. Yes, sir.

Q. Did the same thing happen with him?—A. No, sir.

Q. With reference to that inspection on the morning of the 14th, when these half dozen men, I believe you stated——

By counsel:

He did not state half dozen men as I recall it.

Q. When these few men were selected by Captain Lyon for a further inspection of their rifles, what did the rest of the company do? Did they go up and get their ammunition out and get ready for an inspection of ammunition in the quarters?—A. No, sir.

Q. What did they do?—A. They stood at ease in line.

Q. While this further inspection of the rifles was being made?—A. Yes, sir.

Q. And then did the entire company march into the barracks, and did each man get out his ammunition and put it on his bed?—A. Yes, sir.

Q. With reference to that arm chest, which I believe you state was in the storeroom and still securely nailed or screwed——A. Screwed down.

Q. And with the cover securely screwed down—was that sealed or not?—A. No, sir; wasn't sealed; screwed and locked.

Q. Don't you usually seal your arm chests when you ship them?—A. Yes, sir.

Q. This you state was in just the same condition as when it came from Fort Niobrara?—A. Except the seal had been broken off; it hadn't been opened.

Q. Hadn't been opened?—A. No, sir.

Q. Why did you take off the seal if it wasn't opened?—A. It was done through mistake by the company artificer in opening the arm chests—some had different things in them, and he taken the sealing wax off that, not knowing what was in it.

Q. Did anyone else have the keys to this storeroom except yourself?—A. No, sir.

Q. Do you remember the names of any of those men who were

Q. Was Captain Lyon present at the time?—A. Captain Lyon was on the parade ground in front of the quarters.

Q. And it was opened and the men got their guns and went right down to drill?—A. Yes, sir.

By assistant judge-advocate:

I have one more question I would like to ask; I beg the court's pardon for having omitted it; it is important. With the court's permission I will ask it now.

By president of the court:

If there is no objection, the judge-advocate may ask the question.

RECROSS-EXAMINATION.

QUESTIONS BY ASSISTANT JUDGE-ADVOCATE.

Q. After the company was dismissed that night and sent to its quarters, did you go to your own room and sleep that night?—A. Yes, sir.

Q. And did the first sergeant return to his quarters—that is, to the married men's quarters to sleep?

By counsel:

We object to that. The witness does not know the movements of the first sergeant; he naturally does not know, and it could be asked the first sergeant himself; he is still here and can be recalled. We object to that.

Q. Do you know where the first sergeant slept that night?—A. No, sir.

Q. If he had slept in barracks would you have known it?

By counsel:

We object to that; he has stated he don't know.

By assistant judge-advocate:

May it please the court, in order to save time recalling the first sergeant for an answer to that question, it seems to me if the witness can state that he would have known if the first sergeant had slept in the barracks, and if he did not sleep in the barracks it is immaterial where he did sleep.

By counsel:

That is reductio ad absurdum. Witness has stated he did not know where the first sergeant slept, and there can not be anything more positive than that. You can't get blood out of a turnip; the man says he doesn't know, and the party asking the question, the judge-advocate, has been down and inspected the barracks and knows the situations, and we submit the man naturally would not know, from the position of his room with respect to the first sergeant's. He is not competent to answer that question and we object to the question.

By assistant judge-advocate:

I will withdraw that question.

REEXAMINATION BY THE COURT.

Q. About those flashes you saw from your window; could you determine from them the direction the guns were being fired?—A. No, sir.

By counsel:

If the court decided to take an adjournment, if we may be permitted a suggestion, that they take an adjournment subject to the call of the president, and we promise to advise you at the earliest moment when we are prepared to go on.

By president of the court:

I don't understand quite that the judge-advocate has stated clearly what he wished to do. If he will, please complete his statement.

By assistant judge-advocate:

May it please the court, the prosecution requests authority at this time to introduce one or two witnesses, who are about to leave the post for Washington, merely to clear up the point as to whether the senior noncommissioned officers of those companies were present in the barracks that night after the guns were placed in the racks; and I have sent for those men, and they ought to be here in a very few minutes, sir; and I should appreciate it if the court would take a recess for a few moments until these witnesses could get here, in case that is allowed.

The accused, his counsels, the reporter, and the judge-advocates then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce that, at request of the defense, at adjournment to-day the court will adjourn to meet at the call of the president, with the understanding that the court will not adjourn to a later period than 10 o'clock Saturday morning.

By counsel:

May it please the court, after stepping outside and in consultation with my client, he has requested that we go on this afternoon if possible, and of course it is humanly possible to go on, certainly by to-morrow morning, but we think we can go on, if the court prefers we do it, this afternoon; and I want to say this action is formed on the part of our client by the fact that he feels the court is extremely anxious to have no delays if possible to avoid it. And in this connection we wish to say that we are also advised that the late First Sergeant Sanders and Frazier are wanted back in Washington at the earliest practicable date, and we, on the part of the defense, interpose no objection whatever to their being introduced at this stage of the proceedings if it is the desire of the court to have it so.

By president of the court:

I am also instructed by the court to announce that the court is willing that the witnesses named by the judge-advocate should be called at this time, if there is no objection on the part of the defense.

By counsel:

There is no objection on the part of the defense.

A member of the court here made a motion that the court adjourn until 2 o'clock and to then hear the testimony of the two witnesses named.

By president of the court:

And in this connection I desire to state that the court has no desire to interpose any ruling that would interfere with the defense in presenting the case in such a way as they believe to be for the best interests of the accused.

By counsel:

We will be prepared to state positively this afternoon whether we can go on, and if we can we will; we promise the court that now.

The court then took a recess until 2.10 o'clock p. m., at which hour the members of the court, the judge-advocates, the accused, his counsel, and the reporter resumed their seats.

case Sergeant Sanders is called as a witness, the prosecution desires to state that the fact that we are now willing to introduce him as a witness for the prosecution to bring out these particular points does not in any manner imply that the prosecution is willing to accept his testimony of yesterday as being creditable. It is merely on the ground——

Counsel for the accused:

We object to any such further argument of that nature. This is not the time or the occasion for an argument against the testimony of a witness that the prosecution has distinctly asked permission of the court to call, and we object to any further discussion of that nature. It is entirely improper. He wants to prove something that is elementary; he has got one way to prove it, and he asked the court for that way. Now, if he is going to prove it, the proper way is to prove it or not to prove it, and that sort of discussion is manifestly unfair, and we ask the court to have him desist from such argument.

Assistant judge-advocate:

May it please the court, I request a ruling as to whether the court desires this fact brought out as to the whereabouts of Sergeant Sanders by the proof of Sergeant Sanders himself, or second hand through this witness.

The accused, his counsel, the judge-advocates, the reporter, and the witness then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce that the prosecution is reminded that at their request authority for the introduction of the witness Sanders at this time was granted, and it now rests solely with the prosecution whether they place him on the stand or not.

CROSS-EXAMINATION.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. Sergeant, was your sleeping at your quarters modified afterwards—after this night of the 13th-14th?—A. Yes, sir; I think about the 16th.

Q. By whose order was that?—A. Captain Lyon gave me the order, sir.

Q. You don't know where it came from?—A. No, sir.

Q. When the order was given, you were required to sleep in the barracks, were you?—A. Yes, sir.

(Excused.)

MINGO SANDERS, formerly first sergeant Company B, Twenty-fifth Infantry, was recalled as a witness for the prosecution, and after being reminded that he was still under oath, testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE ASSISTANT JUDGE-ADVOCATE.

Q. Sergeant Sanders, after the shooting was over in the early morning of August 14, 1906, and after Company B was dismissed, did you go to bed or not?—A. I went to my quarters where I lived—in the noncommissioned officers' quarters—and then went to bed.

Q. When did you go to these quarters where you ordinarily slept?—A. About 3 or half past 3, I guess.

Q. On the morning of August 14?—A. Morning of August 14.

for the enlisted men to drink at?—A. No, sir; I never heard any opinion expressed on this by the enlisted men.

Q. Was or was it not a daily custom for the people of Brownsville, men, women, and children, to walk through the post of Fort Brown, from a little before to a little after sunset?—A. Yes, sir; it was.

Q. On the evening of August 14 did you observe any citizens of Brownsville walking through the post at the usual hour for such promenade?—A. Yes, sir; I did.

Q. Was it not a daily custom of the citizens of Brownsville, men, women, and children, to come into the post to witness retreat?—A. Yes, sir; it was.

Q. On the 13th of August, did you observe citizens of Brownsville in the post observing retreat?—A. Yes, sir; it is my recollection that the crowd was as large that evening as any other that I remember.

Q. You noticed no difference in the crowd on that date from the other dates?—A. No, sir.

Q. From the time you arrived at Fort Brown, July 28, 1906, and up to the night of August 13, 1906, was or was it not the custom of large numbers of boys from Brownsville to come into the post daily, and play baseball on the post diamond?—A. Yes, sir; it was.

Q. Where was this post diamond situated, Mr. Lawrason?—A. At the east end of the parade ground, near the guardhouse.

Q. Was that in full view of the officers' quarters and of the barracks?—A. Yes, sir.

Q. Was there a body of water in rear of the officers' quarters at Fort Brown known as the lagoon?—A. There was.

Q. Was or was it not the custom of men and boys of Brownsville to fish and go swimming in this lagoon?—A. Yes, sir.

Q. Do you recall any men or boys, or both, of Brownsville fishing or swimming during the afternoon of August 13?—A. Yes, sir; they went there on that date as usual. I remember a crowd of them passing by my quarters.

Q. Mr. Lawrason, what was your impression about the firing that night when you first waked up?—A. I believed that the post was being fired into from the town of Brownsville.

Q. What was your impression relative to the shooting when you joined your company?—A. I still believed that the post and barracks had been fired into.

Q. Did you hear the conversation that took place between the mayor of Brownsville, Doctor Combe, and Major Penrose about 1 o'clock a. m. on the morning of the 14th?—A. Yes, sir; I was standing near them and heard most of this conversation, I believe.

Q. After hearing this conversation, were you then of the opinion that any man or men of the Twenty-fifth Infantry had anything to do with the shooting?

The assistant judge-advocate:

May it please the court, I object to that question as being leadin[illegible] matter of opinion entirely, and the question is most leading, an[illegible] expression of opinion on the part of the witness.

The president:

I would like to hear the question read.

(The question was read.)

Q. (Question repeated.)
A. No, sir; I did not change my mind.

CROSS-EXAMINATION.

QUESTIONS BY THE ASSISTANT JUDGE-ADVOCATE.

Q. You state that your impression at the time you were awakened by the shots was that the post was being attacked. What is the basis of this impression?—A. I remembered hearing on that afternoon of what was known as the Evans incident, when Mrs. Evans was reported to have been assaulted by a colored soldier. I thought that probably some tough or intoxicated persons in Brownsville had made up their minds to fire a volley or two into the quarters of the negro soldiers.

Q. Did this firing sound to you like ordinary high-power rifles?—A. The impression that I got, as I testified before, was that they were ordinary high-power rifles.

Q. Did you detect any pistol shots or other kind of firing mixed up with this high-power rifle firing during its height?—A. No, sir; during the height of the firing I was in my room dressing, and that was situated on the side of quarters away from the town. I do not believe that I could detect any pistol shots if they had been fired.

Q. When you came out on the parade ground the firing was still going on heavily, was it not?—A. No, sir; it wasn't going on heavily.

Q. But this was still high-power rifle firing, to the best of your judgment formed at the time?—A. Yes, sir; to the best of my judgment it was.

Q. Did you hear any bullets passing over your head on your way to the barracks?—A. No, sir; I heard no bullets.

Q. How long were you present during the conversation between Mayor Combe and Major Penrose?—A. During the entire conversation, I believe.

Q. This was held near the gate?—A. Yes, sir.

Q. How long have you actually served with troops—how long had you actually served with troops prior to August 13, 1906?—A. I joined B Company September 15, 1904—almost two years.

Q. How much of this time were you in command of a company?—A. I believe I was in command of the company almost half of this time. I do not recollect the exact time.

Q. Did you see Major Penrose and Mayor Combe draw apart from the officers and bystanders and have any private conversation beyond your hearing?—A. I do not recollect their doing so.

Q. Might they have done so and you not have seen it?—A. The conversation began about 10 feet from me, I think, and I believe that we were in the same relative positions when it ended.

Q. Are you positive that there could not have been any further conversation between Major Penrose and Mayor Combe beyond your hearing between the time Mayor Combe first arrived and the time he departed?—A. No, sir.

Assistant judge-advocate:

There are no further questions.

(Excused.)

the men to drink at the regular bars, so two of the men had gotten together and started a saloon over in another part of town. I asked him how they had done, and also how they had behaved, and he said, "Excellently;" he said, "The boys are really doing very fine over there, and I have had no cause of any complaint at all."

Q. Was there ever a time, from the arrival of the battalion at Brownsville up to the evening of August 13, 1906, that you heard any unfavorable comment upon the behavior of the colored soldiers from any citizen or citizens that would lead you to believe that there was any particular race feeling against them, other than that usually in the South?—A. No, sir.

The judge-advocate:

We would like to go on record as commenting on the fact that that question is leading, but we are not interposing any objection.

Q. As company commander, did you hear anything from any of your men to lead you to suppose that there was any bitter feeling among the men toward the citizens of Brownsville, further than as covered in your former testimony in the individual cases that were mentioned there?

The judge-advocate:

May it please the court, I object to the question as being leading. It bears very closely upon one of the allegations in the specifications, and it is leading the witness in that direction. I would like to have the question again read to the court.

(The reporter here read the question objected to.)

And supplementing my former remark, I would like to say that we have no objection and will make no effort to exclude any pertinent evidence on this point, but we do object to the manner in which counsel is trying to bring out this evidence. He is clearly taking the witness by the hand and leading him into the pastures where he would have him be, and, therefore, I object to the manner and not to the materiality of the evidence being brought out.

Counsel for the accused:

We are very glad to know that the judge-advocate thinks we are adhering to the specifications as formed by himself. We did not form the specifications, and we are adhering to the specifications therein contained, as near as human ingenuity can. The question here before you is to determine what Major Penrose, as a commissioned officer, at that time should have known in regard to the feeling of hostility on the one hand from the people of Brownsville, and on the other hand from the people of the post, and we submit that the only competent persons to testify to that are the officers who were directly in charge of the companies—who were company commanders. Certainly you can not get anyone better than the company commanders to testify as to that feeling that came to him as such commanding officer, and if any came to them we would follow that with, "Did you report it to the post commander?" This court should know that that would be the only logical way that the post commander would have arrived at that conclusion.

The judge-advocate:

I have already stated, may it please the court, that it is not as to the materiality of the question that I object, but to the form of many previous questions. We are trying to keep our peace and not interpose useless objections or unnecessary objections, but we do not think we can afford to allow leading questions such as these are to go in without an objection on our part, and we would like to have a ruling of the court on the subject.

The president:

Before the court is closed I will state that as the objection is only to the manner in which the question is framed, that counsel might desire to modify the question in some way.

the men to drink at the regular bars, so two of the men had gotten together and started a saloon over in another part of town. I asked him how they had done, and also how they had behaved, and he said, "Excellently;" he said, "The boys are really doing very fine over there, and I have had no cause of any complaint at all."

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The president:

Before the court is closed I will state that as the objection is only to the manner in which the question is framed, that counsel might desire to modify the question in some way.

Q. Did the men and boys of Brownsville ever fish or go swimming in this lagoon?—A. People of Brownsville fished there, and the boys went in swimming daily.

Q. Do you recall whether or not any men or boys, or both, from Brownsville were fishing or swimming during the afternoon of August 13, 1906, in this lagoon?—A. Yes, sir; they passed my house going to the swimming pool, or swimming part of it.

Q. Were you in the city of Brownsville at any time during the day or evening of August 13—or during the day, we will limit it to that?—A. Yes, sir; I first went down about 9.30 in the morning. I was there again in the evening following, accompanying the patrols that I sent out.

Q. Yes; you have testified to that. Now, during these visits was there anything in the actions or conversations of any citizen or citizens of Brownsville that you saw or talked to to intimate in any way that there was an inflamed feeling or bitter feeling among the citizens of Brownsville toward the negro soldiers?—A. Not in the least. I went in several places, and there was no indication of it.

Q. Did you ever at any time prior to midnight of August 13 and 14, 1906, hear or learn anything from any source whatever that would lead you to believe that there was any feeling of resentment by the colored soldiers against the citizens of Brownsville?—A. No, sir.

Q. Or of any inflamed feeling among the citizens of Brownsville toward the soldiers at Fort Brown?

The judge-advocate:

Both of those questions, may it please the court, are subject to the same objection that they are leading, but we interpose no formal objection.

A. No, sir.

Q. I think you said you were on guard duty with your company after you reported that night with the entire company; is that so?—A. Yes, sir.

Q. I think you stated you found some shells the following morning; is that true?—A. Yes, sir.

Q. (Counsel asked judge-advocate to hand Captain Macklin certain shells.) Before we go into that, I think you said you found some clips also?—A. Yes, sir.

Q. Tell the court again about how many clips and how many shells you found at that time.—A. To the best of my recollection it was 5 clips and 7 shells and 1 cartridge.

Q. Will you show the court just how these shells and clips were lying when you found them?—A. Yes, sir.

Q. Put them right on the floor, please, Captain.—A. (Witness places shells on floor.) They were in an area not very much larger than that—not over 8 or 9 inches in diameter, all lined together.

Q. In a bunch like that?—A. Yes, sir; one was over a little further off, about 3 feet, probably, from the rest; all the rest of them were together.

Q. The clips and the shells lying in a bunch just like that?—A. The clips and shells were all together.

The president (to reporter):

Please read the last answer; I would like to see how you have it recorded.

(The reporter complies.)

The judge-advocate:

We shall have to object to this as hearsay, may it please the court.

Counsel for the accused:

We purpose to show by this witness exactly what the witness of the prosecution stated to this witness on the following morning. It is not only in rebuttal, but it is in positive denial of the evidence as given by that witness at that time. It is clearly admissible on both grounds.

The accused, his counsel, the judge-advocates, the reporter, and the witness then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce that the objection is not sustained. The question will be answered.

Q. (Question repeated.)—A. On the morning of August 13, about 8 o'clock and prior to that hour, quite a number of people came to the telegraph office and were unable to get in——.

Q. Don't you mean the morning of the 14th, the morning after?—A. The morning of the 14th, I should say; yes, sir.

Q. Well, go on.—A. And about 8 o'clock the office was finally opened and this man—I have forgotten his name now—came to the door. I was on duty at the wall, and called him over and asked him what the trouble had been the night before, and he said, "I do not know; I heard some shooting, but I did not take the trouble to get out of bed to see what it was. I thought it was a drunken row."

Q. Is that all that he said?—A. That is all I recall now; yes, sir.

Q. You know that this was the man in charge of the telegraph office?—A. Yes, sir.

Q. Was his name Sanborn?—A. Yes, sir; Mr. Sanborn was his name.

CROSS-EXAMINATION.

QUESTIONS BY THE ASSISTANT JUDGE-ADVOCATE.

Q. Were the Mexicans down there apparently friendly with the soldiers?

Counsel for the accused:

What is the purpose of that? There was nothing said in the direct examination about that.

The judge-advocate:

May it please the court, it is a matter of almost common knowledge that the town of Brownsville consists of some 5,000 Mexicans and about 1,000 Americans. The feeling of the people of Brownsville toward the soldiers has been touched upon by the defense, and I think this question is perfectly proper on the part of the prosecution.

Counsel for the accused:

If they will frame it so it will be confined to the direct examination we won't object to it.

Q. Were these men who came fishing and swimming mostly Mexicans or white people—or, rather, Americans?—A. They were of all classes.

Q. But which race predominated?—A. Well, I really couldn't say.

Q. There were Mexicans among them, however, were there not?—A. Yes, sir.

Q. How far were you from them when you first saw them?—A. I don't know.

Q. It was very dark the night of August 13–14?—A. Very dark indeed; yes, sir.

Q. And during the latter part of the night you were alone with your company along the wall. Is that correct?—A. From some time near 2.30 until daylight—until after daylight.

Q. I think this fact has been brought out on the other examination, but in order to be sure of it, did you leave your company at any time during this period?

Associate counsel for the accused:

May it please the court, I object to that question. It is not proper cross-examination. We have limited ourselves in the examination of this witness to certain points that we wish to bring out in defense, and we request that the assistant judge-advocate be limited to those lines that were brought out on direct examination.

The assistant judge-advocate:

May it please the court, in reply to the remarks of the associate counsel, I desire to state that this question of the finding of the shells has been brought out on direct examination, and it seems to me that anything which tends to show that circumstances were such that prior to the time that these shells were picked up by the witness that other people other than he might have picked up other shells in the street along the garrison wall, or within the wall, without being seen by him. It is of record that Company C was deployed as skirmishers along this wall for a period of several hours—in fact, from about half past 2 until daylight; during that time, as I remember the evidence, but one officer, the witness, was present, and as he has testified that the night was very dark, it seems to me that any questions tending to bring out the fact that other people might have picked up shells in the road without his knowledge is pertinent. And that is the object of this line of questioning right now.

Associate counsel for the accused:

May it please the court, I am very much interested in the inferences that are being drawn in the argument of the assistant judge-advocate, but I submit that the proper time to draw those inferences from the evidence is when the case is closed and they should then be drawn by the court. It is not the time to draw any inferences at this time. My objection was specifically that the question extended to matter not covered by the direct examination, and as such I do not think it is admissible. I have listened to the reply of the assistant judge-advocate, but I fail to see any point in his reply which covered my objection.

(The question was read at the request of the court.)

The accused, his counsel, the judge-advocates, the reporter, and the witness then withdrew, and the court was closed, and, upon being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce the decision that the objection is not sustained.

(The question was read by the reporter as follows: "Q. I think this fact has been brought out on the other examination, but in order to be sure of it, did you leave your company at any time during this period?")

A. I did not leave my company at all from the time that I was directed to go to it by the commanding officer until next morning when I was relieved by Lieutenant Lawrason. I testified on the previous day that I had visited the sentinels, but I was not absent from my company at any time during that period.

what occurred at that time, and I wish to go on record as informing this court that that has been deliberately cut out of the charges against Captain Macklin, although once formulated, and, as I understand it, it is entirely improper.

Associate counsel for the accused:

I desire to continue this statement that I have to make, and if there is anything objectionable in it it can be passed on by the court——

A member:

I move the court be cleared.

(Whereupon the court was cleared.)

Assistant judge-advocate:

I request that the court remain open, sir.

The president:

Wait a moment. I would like to hear the question read.

(The reporter read the question objected to, as follows:

"Q. To the best of your recollection, did you hear or overhear anything said there that would indicate a feeling of resentment on the part of any individual against either the colored troops or their officers?")

Another member:

Mr. President, I believe the motion of the member in asking to have the court cleared——

The president:

The member will please sit down. The court is always cleared at the request of a member.

The assistant judge-advocate:

May it please the court, I requested that the court remain open because I desire that the same publicity be given my remarks as were given the remarks that reflected upon me, and I desire to state now, officially, that I am perfectly willing and desire that people be present here just as they were here when this statement was made by the associate counsel. I had no intention whatever of trying to bring out by this witness anything that would hurt him in his own case. I had rather make this statement before the public, if the court may be opened, or I can make it here now, and it can be read over later if the court so desires. I merely wish to state, with reference to this particular occurrence, that I have heard that in Captain Macklin's case there was a charge with reference to this particular incident and that it was afterwards withdrawn, and from remarks that Major Penrose made to me with reference to these men, who were, according to their affidavits, present at this time, in which remarks of Major Penrose he referred to them, "Have those scoundrels told you their story yet?" and, as I remember it, asked who they were, and he said, "Billingsley and that outfit;" and I did not intend to press this matter any further, and I don't intend to call those men as witnesses in my case unless it seems to me absolutely necessary. I never have asked Captain Macklin about this case, but from the way Major Penrose talked about the case and about these men I don't know that their introduction in either this case in rebuttal or in my case would be of any benefit whatever to the side of the Government. The question was not asked with any ulterior motive, as the associate counsel seems to believe, and was asked after I had spoken to Captain Hay. We had talked about whether it should be asked, and he said, "Go ahead and try it;" he said, "They will probably object to it." I have no intention of trying to force anything out of Captain Macklin that would redound to his hurt on his own trial, and I state that with all sincerity and truth, that I do not and have not at any time intended to do that, and I am sorry that my motives have been misinterpreted by either the associate counsel or anyone else. If they have been so misinterpreted by anyone else, I don't know of it.

Associate counsel for the accused:

May it please the court, I accept the amendment as regards the matter of the cross-examination. It was either the direct or the redirect examination, but on all other points I described I stand ready, if the court thinks it necessary, to cite them—to cite that portion of the record to which I referred.

A member:

Before the court is closed, Mr. President, I think, getting back to the point I had in mind, the associate counsel might retract his reflections on the assistant judge-advocate, and that will settle the matter and the court will not have to be closed on that matter.

Associate counsel for the accused:

May it please the court, I have no retraction to make of anything I have said before this court.

The accused, his counsel, the judge-advocates, the reporter, and the witness then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce that the objection is sustained. The court admonishes associate counsel for the defense that his remarks reflecting upon the motives of the assistant judge-advocate are considered improper. Please proceed with the examination.

Assistant judge-advocate:

There are no more questions on the part of the prosecution.

REDIRECT EXAMINATION.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. (At request of counsel the reporter read the following question from the cross-examination of this witness: "Q. Was it so early in the morning when you picked up these shells that it was impossible for anyone, a few minutes earlier, to have seen other shells on the street and to have picked them up?") Captain Macklin, were there any other people along the street there previous to the time of your picking up the shells after daylight—after it was light enough to see?—A. I don't think anyone went along that street from the time I went on duty until later in the day.

QUESTIONS BY THE COURT.

Q. At about what hour did you find the clips and empty shells?—A. I can't tell you the exact hour; it was about 5.30, though.

Q. Why did you not immediately take them to Major Penrose for his information?—A. I showed the shells and clips to Major Penrose within five minutes after I had found them.

Q. Can you tell in any way by inspection whether or not a cartridge shell of the kind you picked up August 14 on Fifteenth street had been recently fired or not? If so, did you inspect those shells with that in view, and with what result?—A. I did not. Please repeat the question.

Q. (Question repeated.)—A. I think I could tell if it had recently been fired. I looked at them and they had been fired at some time

Associate counsel for the accused:

May it please the court, I accept the amendment as regards the matter of the cross-examination. It was either the direct or the redirect examination, but on all other points I described I stand ready, if the court thinks it necessary, to cite them—to cite that portion of the record to which I referred.

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Q. (Question repeated.)—A. I think I could tell if it had recently been fired. I looked at them and they had been fired at some time

Q. Did you ever hear any of them express any opinion, either favorable or unfavorable, about the separate bars provided for the enlisted men of the Twenty-fifth Infantry?—A. I was told on several occasions, not in a resentful way, but merely as a matter of information, that it was impossible for colored men to drink at the same bar with white men in that town, and that the soldiers must understand that.

Q. Did you ever hear any of the soldiers of the Twenty-fifth Infantry express any opinion, either favorable or unfavorable, about the separate bars?—A. I did not.

Q. Was it or was it not a daily custom of the people of Brownsville, men, women, and children, to walk through the post of Fort Brown from a little before to a little after sunset?—A. It was.

Q. Did you notice whether they did so on the afternoon of the 13th?—A. I do not remember.

Q. Was it or was it not a daily custom for the citizens of Brownsville, men, women, and children, to come into the post to witness retreat?—A. It was.

Q. Did you observe citizens of Brownsville on the 13th of August in the post observing retreat?—A. I don't remember that date specifically.

Q. From the time you arrived at Fort Brown, July 28, and up to and including August 13, was it or was it not the custom of a large number of boys from Brownsville to come into the post daily and play baseball on the post diamond?—A. It was.

Q. Where was this situated, with respect to the barracks and the officers' quarters?—A. Situated on the east end of the parade ground, between the barracks and the officers' quarters.

Q. Was or was there not a body of water in rear of the officers' quarters in Fort Brown, known as the lagoon?—A. There was.

Q. Did the men and boys of Brownsville ever fish and go swimming in this lagoon?—A. Yes; almost daily.

Q. Do you recollect whether any of these men and boys, or both, from Brownsville were fishing or swimming during the afternoon of August 13?—A. I do not recollect.

Q. Mr. Grier, what was your impression about the firing that night when you first woke up?—A. My impression was that some friends of Mr. and Mrs. Evans had come up to the post, shot into the barracks to avenge the outrage alleged to have been made upon Mrs. Evans the night before.

Q. What was your impression at the time you joined C Company?—A. The same thing—that the post had been fired into.

Q. Were you at the main gate when Captain Lyon, with his company, returned to the garrison? Do you know what hour of night it was?—A. I was not at the main gate, but I heard the company come in. I think it was about 1 o'clock.

Q. Did you hear any conversation that occurred between the mayor of Brownsville, Major Combe, and Major Penrose at this time?—A. I did.

Q. State as fully as you can this conversation.—A. Mayor Combe said to Major Penrose: "Major, your men have done this thing; some of our most reputable citizens have seen them and recognized

Q. Will you tell the court her version of the story as she gave it to you at that time?

By judge-advocate:

May it please the court, we think this is entirely objectionable testimony, unless it is an attempt to impeach the testimony of Mrs. Leahy. She has been before the court.

By counsel:

It couldn't be a plainer case than to impeach the evidence of that woman.

By judge-advocate:

If that is the purpose, we have nothing more to say.

By counsel:

Why, clearly so. Do I understand there is an objection interposed?

By judge-advocate:

Our objection is withdrawn if that is the purpose of counsel.

Q. (Question repeated to witness.)—A. She stated at about 12 o'clock the night of the 13th–14th of August she heard two shots which she supposed had been fired from the upper gallery of the middle barracks. That in company with Judge Parks she went to a window overlooking the alley and stood at an open window. That while standing there she saw 10 or 12 men jump the wall, come down the alley, and when they got opposite her house one of the men touched the man whom she supposed to be the leader of the party and pointed up to the window where she was standing dressed in a white wrapper. The leader of the party said very distinctly, so she could hear him, "No, not there; straight up the street." The squad then moved up past her house and after going up a little ways fired the first volley. They then came down past her house and fired another volley, the commands being given by the man she supposed to be the leader. They then ran back—call to arms sounded—and jumped the wall into the post, when somebody said, "Let's give them one more." She said they then rested their rifles on the wall and fired the last shots. Then disappeared in the barracks.

Q. Do you remember whether she said anything about being spoken to about standing in the window in white clothes?—A. She did.

Q. What was that?—A. Judge Parks begged her to come away from the window; she would surely be shot.

Q. Anything else you remember she told you at that time in connection with the affair?—A. No; I believe that's all.

Q. I believe, Mr. Grier, you were acting adjutant during the period about pay day and up to and after the 13th and 14th of August?—A. Yes, sir.

Q. Did you actually pay the troops, Mr. Grier?—A. I did.

Q. When did you pay them? What date?—A. I paid them on Saturday, the 11th of August.

Q. As adjutant, Mr. Grier, do you have any recollection of having sent for the United States district attorney for the commanding officer, Major Penrose, at any time about the period in question?—A. Yes, sir; upon order of the commanding officer I telephoned from the quartermaster's office or rather had the post quartermaster-ser-

Q. Were you present on the following day, Mr. Grier, when the Citizens' Committee came in and called upon Major Penrose in regard to the event of the night before?—A. Yes, sir.

Q. Who also was present, of the garrison, I mean, at this conversation?—A. Captain Lyon was the only other officer, the commanding officer, and myself.

Q. Do you remember how many men were in this committee?—A. Approximately. I believe there were about 12 men.

Q. What was the general purport of the conversation—that is, as you recall it? I don't mean the language used, but what was the controlling thought that ran through it?—A. It was a request on the part of the Citizens' Committee to the commanding officer to have him give them some assurance that it would be safe for them and their families to stay in Brownsville.

Q. Were you asked by any member of that committee whether or not the only check upon the presence of the men the night before was made by noncommissioned officers?—A. Yes.

Q. Tell the court the circumstances about that.—A. I was asked by Mr. Dennett, "Who checked those niggers in last night when they went to bed?" I told him the noncommissioned officer in charge of quarters, as usual.

Q. Was there any conversation in regard to whether or not there had been any examination of the arms, the ammunition of the men after the shooting occurred that night?—A. Yes, sir.

Q. Was there any statement made by you, or in your hearing, that this check had been made—the only check-up that was made—was made by the noncommissioned officers of the garrison?—A. I never heard any such remark.

Q. Did you make any such remark?—A. I did not.

Q. Did you hear any question asked Major Penrose if the commissioned officers under his command had made a personal examination of the men, the guns and the ammunition, the night before, after the shooting?

By assistant judge-advocate:

May it please the court, the prosecution believes that this manner of getting out testimony from a witness on the direct examination is not in accordance with the ordinary rules of procedure.

By counsel:

May we ask the assistant judge-advocate to cite any law on that question before we answer? And in so stating we wish to state distinctly that we have quoted verbatim from the record with the distinct purpose—anyone who runs may read—of contradicting, to our minds, the perfectly absurd statements of Mr. Dennett. Any military man could see they were absurd, in our judgment, and we purpose to contradict it by this witness, whom he says was there. We would like, before answering the assistant judge-advocate, to have him cite any law supporting his contention.

By assistant judge-advocate:

May it please the court, on the direct examination of a witness who is giving testimony that tends to impeach testimony of witnesses who have already appeared for the other side, it seems to me that to ask him whether he heard particular statements or not is not the proper way of arriving at the truth. But there is no objection; we will not specifically object to this, but we merely wish to state that in ordinary direct examination that this method is not ordinarily followed.

night of 13th-14th of August.—A. I don't remember hearing any such conversation.

Q. The question was, Did you hear any conversation?—A. No.

Q. Were you asked by Mr. Dennett whether or not a personal examination had been made of the men—the members of the command—their guns, and ammunition?—A. He asked me directly what I had done to detect the guilty parties. If I had examined the rifles, checked up the ammunition, and was satisfied that all the men were there. I told him that I had not inspected any rifles or ammunition; that I did not belong to a company, was a staff officer and merely attached to C Company during the absence of Captain Macklin.

Q. Did you hear this Mr. Dennett ask a similar question of Captain Lyon, who was the other officer sitting there?—A. I did not. There was a great deal of questioning going on all through the room, different members of the Citizens' Committee questioning at the same time one or more officers.

Q. Where was Mr. Dennett sitting, with respect to you, or standing at the time he asked this question?—A. Sitting about 5 feet to my left.

Q. Did you hear a similar question asked of Major Penrose by this same gentleman, Mr. Dennett?—A. I did not.

Q. Did you inform him that all the information you had gotten about the affair of the night previous came to you through reports of the noncommissioned officers and privates of the command?—A. I did not. He never asked me any such thing.

Q. Did you hear any such question asked and answer given?—A. I did not.

CROSS-EXAMINATION.

QUESTIONS BY ASSISTANT JUDGE-ADVOCATE.

Q. Mr. Grier, were you present during all the time that the Citizens' Committee was in the office of the commanding officer?—A. I was.

Q. But during a considerable portion of the time is it not a fact that you could not have heard everything that was said by Major Penrose, Mayor Combe, and Mr. Dennett?—A. No; I couldn't possibly have heard everything that was said.

Q. So that you were being questioned by different members of the committee at different times yourself?—A. Yes.

Q. And the same is true of each of the other officers there?—A. Yes.

Q. When Mr. Creager visited Major Penrose's office on the morning of August 13 did you take part in the conversation at all, or did you continue your work at your desk?—A. I continued my work at my desk.

Q. Did you have a good deal of work to do?—A. Fair amount.

Q. Are you sure you heard everything that passed between Mr. Creager and Major Penrose?—A. I did in substance, yes; I couldn't help it. Mr. Creager wasn't sitting more than 3 feet from me, and his tone was the ordinary tone of conversation.

Q. You were in the office, however, at the time Major Penrose was first found by Mr. Creager outside, were you not?—A. Yes.

Q. In your conversation with Mrs. Leahy, on August 25 or 26,

By counsel:

I would like to know the purpose of that; it was not touched on in direct examination.

By assistant judge-advocate:

I will withdraw that question.

EXAMINATION BY THE COURT.

Q. Tell us all you heard of the conversation between Major Penrose and Mayor Combe about 1 o'clock on the morning of August 14, near the gate.—A. As they came up and reported to Major Penrose, I heard Mayor Combe say: "Major, your men have done this thing; some of our most reputable citizens have seen them and recognized them to be soldiers under your command." Major Penrose replied: "I can't believe it—I can't believe it." That's all the conversation I heard.

Counsel for accused here addressed the court as follows:

There was a witness reported to us this morning and I have not had time to examine him. I can get ready for that witness, if the court desires, for this afternoon. It is Sergeant Carlisle. I am very sure that with time I could probably curtail it so that it would be to the interest of all concerned for the court to adjourn until to-morrow morning. I have some other witnesses here; I have seen them about twenty minutes, or half or three-quarters of an hour, maybe an hour. I would not pretend to get ready myself for the examination of these witnesses inside three or four hours of careful, diligent study of what I purpose to bring out by them. I say this in all frankness. I stated yesterday in conversation with the president that I thought by an extra adjournment or recess at noon I could be ready to go on. There is no use beating around the bush; I am not, and I can't be without such prejudice to the case that I am sure the court will not ask me to do so. We will be ready to go on to-morrow morning, but if the court desires to meet this afternoon to hear the testimony of Sergeant Carlisle, we will be glad to go on.

A motion was here made by a member of the court, and seconded, that the court take a recess until 2 o'clock p. m.

The court then took a recess until 2 o'clock a. m. [p. m.], at which hour the members of the court, the judge-advocates, the accused, his counsel, and the reporter resumed their seats.

Counsel for the accused:

Now, may it please the court, this morning there was an objection raised and a ruling of the court made which we think prejudices us, and particularly so, as we may have to pursue the same method of examination in regard to other witnesses that will be presented here. You will recall that we stated distinctly that we did not attempt to argue it as we considered that it was the only logical method, to our mind, to contradict a witness as to certain previous statements that he had made. We recognize, of course, that the general rule is that leading questions are prohibited on direct examination, but we also recognize the fact that the authorities on evidence, and we contend that they do, support us on the contention that there are certain well recognized and well-established exceptions to that rule, and that the exceptions are so well recognized as a matter of fact that they are a part of the rule itself. Mr. Wharton, in his Criminal Evidence, ninth edition, section 454a, thus states the rule: "It has been shown that while as a rule leading questions are not permitted, exceptions are recognized where witnesses are unwilling, where they are of weak memory, where a witness is called to contradict and where such a mode of questioning is logically consistent with a fair and honest development of the case."

In both of the last we maintain that our case this morning fell within, and others that we may present will also come within these exceptions. Under

Q. Were you with C Company of the Twenty-fifth Infantry at Brownsville in August last?—A. Yes, sir.

Q. You were stationed at Fort Brown on the 13th and 14th of August?—A. Yes, sir.

Q. Were you aroused from your sleep on the night of the 13th-14th of August?—A. Yes, sir.

Q. Did you hear any call——A. Yes, sir.

Q. Shortly after that?—A. Yes, sir.

Q. What call was it?—A. Call to arms.

Q. What were you doing when call to arms was sounded?—A. I were dressing, sir.

Q. What did you do when you heard the call to arms sounded?—A. After call to arms I finished dressing and then I reached on the wall and got my belt and proceed to the gun rack.

Q. Was the gun rack open?—A. No, sir.

Q. Did you take any steps to get the gun rack open?—A. Yes, sir.

Q. What did you do?—A. I called for the noncommissioned officer in charge of quarters.

Q. Who was that?—A. Sergeant Brawner.

Q. Did you do anything else to get Sergeant Brawner?—A. Yes, sir; after he didn't answer I called for Corporal Madison and told him to go down, and some one then said that the sergeant in charge of quarters had gone downstairs, and I called Corporal Madison to go down and find the sergeant in charge of quarters and tell him call to arms had blown.

Q. Did you hear any order given about opening the gun racks; if so, what was the order and who gave it?—A. About that time I heard Major Penrose say to open the gun racks or to get the gun racks open and have the men fall down; if you couldn't find the man in charge of quarters to open the gun racks and have the men fall down at once.

Q. Was your gun rack only opened; if so, by whom—that is, the gun rack from which you got your gun?—A. It was unlocked.

Q. By whom?—A. By the man in charge of quarters.

Q. It was unlocked, at any rate?—A. Yes, sir.

Q. Did you hear any noise of breaking open gun racks about this time? If so, tell the court what it was.—A. After the order was given?

Q. Whenever it was.—A. Yes, sir; after the order was given there was a hammering on the racks then.

Q. Are you certain that this hammering on the racks was after the order was given, as you stated, by Major Penrose?—A. Yes, sir.

Q. Had you heard any hammering on the racks previous to that time?—A. No, sir.

Q. Where was Major Penrose when he gave this order?—A. He was on the front some place near the company quarters. I don't know whether he was on the front porch or on the walk. He was somewhere near the end of the quarters.

Q. Do you mean the side facing the parade?—A. Yes, sir; the side facing the parade.

Q. Sergeant, did you see any broken guns in your company, or injured guns, I mean, after this—shortly after this?—A. Next morning I did, sir.

ters I got up and put on a part of my clothes as quick as possible; before I got my clothes on a call to arms went."

(Here the assistant judge-advocate requested the reporter to read the following answer from direct examination of this witness: "A. After call to arms I finished dressing, and then I reached on the wall and got my belt and proceeded to the gun rack.")

The assistant judge-advocate:

May it please the court, there is no conflict there, so far as I can see; I thought there was.

REDIRECT EXAMINATION.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. When you state first sergeant, do you mean to tell this court that you had a first sergeant at the post on the night of the 13th and 14th of August in the quarters?—A. There was a man that was acting as first sergeant.

Q. And who was that?—A. Sergt. Samuel W. Harley.

Q. Was Sergeant Brawner a married man, Sergeant?—A. Yes, sir.

Q. Did he ordinarily sleep in his quarters that were provided for him outside of the barracks?—A. I don't think he did; I don't remember, sir.

Q. You don't know about that?—A. I don't know, sir, whether he did or not.

Q. The noncommissioned officer in charge of quarters slept inside the quarters?—A. The noncommissioned officer in charge of quarters stayed in quarters all the time.

The judge-advocate:

May it please the court, we would like to go on record as stating that this examination is not for the purpose of rehabilitating the witness; it does not touch upon anything that was brought out on cross-examination; but we do not care to interpose a formal objection to it.

Counsel for the accused:

I am very sure they went into it upon the cross-examination as to whether the first sergeant slept in the quarters, and they asked about where the noncommissioned officer in charge of quarters slept. I think the record will bear us out in stating that.

QUESTIONS BY THE COURT.

The assistant judge-advocate:

Before the examination of the court, there is one other question I would like to ask the witness.

The president:

Very well.

RECROSS-EXAMINATION.

QUESTIONS BY THE ASSISTANT JUDGE-ADVOCATE.

Q. Did the noncommissioned officer in charge of [illegible] sleep in the squad room where the gun racks were kept, [illegible] Th[illegible] sleep ordinarily in one of the rooms assigned the sergeants?—[illegible] ne man in charge of quarters slept wherever his bunk were.

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RECROSS-EXAMINATION.

QUESTIONS BY THE ASSISTANT JUDGE-ADVOCATE.

Q. Did the noncommissioned officer in charge of quarters sleep in the squad room where the gun racks were kept, or did he sleep ordinarily in one of the rooms assigned the sergeants?—A. The man in charge of quarters slept wherever his bunk were.

Col. A. H. STUCKY, a witness for the defense, was duly sworn, and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE ACCUSED.

Q. Colonel, will you state to the court your name and present residence?—A. My name is Harry A. Stucky; I am located at Minera, Tex.

Q. How far is Minera from Laredo?—A. Thirty miles by railroad.

Q. What is your profession, Colonel?—A. I am an electrical mechanical engineer.

Q. And your present employment?—A. I am electrical mechanical engineer for the Rio Grande Coal Company.

Q. Located at Minera?—A. At Minera, general offices at Laredo.

Q. Have you been quite a hunter during your life, Colonel?—A. Yes, sir; I don't think I have ever let an opportunity in my life slip to go hunting.

Q. You are owner of a good many guns?—A. I think some seven or eight, of different makes and caliber.

Q. Have you during your life, as an electrical engineer, made more or less experiments testing the effect of various kinds of electric lights?—A. Yes, sir.

Q. Were you in Fort McIntosh about the 17th or 18th of February last?—A. Yes, sir.

Q. Who were you with at that time, Colonel?—A. I was the guest at dinner at the residence of Major O'Neil.

Q. Just recently promoted from captain?—A. Yes, sir.

Q. He was in command at McIntosh at that time?—A. Yes, sir.

Q. Were you a participant in any experiments made that night in regard to the firing of guns, etc.?—A. Yes, sir; I was invited by the major to witness some experiments he intended to make in that line.

Q. I wish you would tell the court what the experiment was; briefly as you can.—A. There was a series of experiments devised by Major O'Neil, or ordered by Major O'Neil and engineered by one of the lieutenants of his command, to do some firing with a squad of men in an arroya back of Fort McIntosh, and when the arrangements were all made for the firing I was invited by the major to go out and see what happened, and they led us out back of the fort to where the arroya was deepest and the shadows most dense, and a squad of men were marched down in there and a number of shots were fired. We had no knowledge of the number of shots or how the men were located or anything else. There were two lanterns placed on the upper banks of the arroya as points of safety by the lieutenant in charge of the experiments, and we were instructed to stand between those lights and see what we could tell about what would happen.

Q. Let me interrupt you there a moment. Describe this arroya as near as you can—how wide and how deep.—A. The arroya was about 22 or 23 feet, from where we stood, to the top of the arroya from the bottom of it, and the arroya had divided and there was what you might term an island in the middle of it—had divided

we had the lieutenant was ordered by Major O'Neil to send for a supply of ammunition. We didn't know how much; it was left to the discretion of the lieutenant, and he got the ammunition and marched the men—the men had started out of the arroya, and he marched them back again into different positions and fired again.

Q. Did you change your point of view at that time?—A. Only a few feet—not more than 20 feet.

Q. Go ahead.—A. And the men were then placed in positions and fired. We could tell that the firing, from where we were standing above, that the lights of the flash were not parallel; that they varied in direction. We learned afterwards that was due to the instructions; they were not all firing at a parallel line. We could not tell how many shots were fired, but afterwards learned 60 shots were fired.

Q. What was the general effect in regard to your ability to distinguish men and objects in this second test?—A. We could not distinguish any more than we could see a number of moving objects down in the arroya.

Q. You mean to say you could not determine whether they were men or not?—A. No; we could not tell.

Q. Was the direction of the moon changed in this test, in so far as it fell on the men, or not?—A. It all occurred within twenty minutes; twenty minutes covered the entire time of the firing.

Q. Your direction with respect to the men and the moon, then, was substantially the same in both experiments?—A. Yes.

Q. And, as I understand you, the moon shone from your back down on the men?—A. Yes; we were with our backs almost to the east or northeast.

Q. Was this experiment continued further, Colonel? If so, tell the court what was done.—A. The discussion came up as to whether we would be able to distinguish the men at certain distances—for instance, 20 feet. The men were marched by us. We were supposed to be concealed in the brush ourselves, and the men marched by almost facing the moon, at a distance—we could almost reach out and touch the men on their shoulders as they passed—not more than 5 feet at the extreme, but we were unable to tell a mulatto from a white man. We could distinguish some had on blue shirts, some blue trousers, and some khaki trousers—that the uniforms were mixed up; and we could also distinguish that in the detachment of men there were three that were not black.

Q. That is, at that distance?—A. At that distance; yes.

Q. As these men marched toward you with the moon shining on them?—A. Yes, sir.

Q. And they were in file, do you say?—A. Yes, sir.

Q. Do I understand you to say that in looking at these men as they came toward you along the roadway, or whatever it was, that it was not until they had arrived within practically the distance you mention—of arm's length, or 3 or 4 feet—that you could determine the difference in complexion between the white men and the dark ones?—A. Yes, sir; that was the only time we could tell.

Q. Had they passed by you before that, Colonel, or not?—A. No, sir; that was the first time they passed us.

Q. Colonel, about what candlepower is the light given from the flashes of those guns as you saw them that night? What's your

Q. You could tell they were in uniform rather than ordinary civilian clothes with white shirts?—A. Yes, sir.

Q. You could tell they were in uniform rather than civilian clothes?—A. Yes, sir.

Q. Though you could not recognize their features at all at that distance?—A. No, sir.

Q. Was any effort made to see whether, in case a rifle was fired off so that the muzzle of it was almost in front of another man's face—was any effort made to see whether under those circumstances the flash of the gun would reveal the man's face at all?—A. No, sir.

By counsel:

I would like to state we will show that by a witness who was there; I don't think this witness can testify to that.

Q. How far were you from the men the second experiment?—A. About the same distance; moved probably 20 feet to get a different view; the men were in the same position about, but we had moved back to see if we could see the direction of the flash—the direction of the flash.

Q. So you were 20 feet farther away?—A. No; we were nearer the men.

Q. About how far from them?—A. I presume if we were 40 feet from them before we must have been 30 feet this time.

Q. The distances weren't measured at all?—A. No.

Q. And the farthest man in either experiment was how far from you?—A. I presume the farthest man must have been about 55 feet. I could not state that positively.

By counsel:

For the information of the court, I will state that we will fix those distances pretty accurately. The Colonel does not know.

Q. When the men walked directly toward you in the third experiment, did they have their hats back on their heads?—A. No, sir; the hats were level on their brows, each one.

Q. Could you distinguish a very black negro from a white man?—A. Yes, sir; we could locate in the line of march the light complected and the negroes, that was all.

Q. That was at a distance of 4 or 5 feet?—A. About 4 or 5 feet; yes.

Q. Was any attempt made to see whether you could distinguish negroes from white men at any greater distance?—A. No, sir.

REDIRECT EXAMINATION.

QUESTIONS BY THE ACCUSED.

Q. Colonel, you said you could distinguish the uniform. Do you mean to say you could tell a uniform from a civilian suit in the first experiment when the men were shooting? If a civilian suit, for instance, and a uniform of the same color were together, could you tell the difference?—A. No, sir; we could not have told them. The only thing was there was a lightness and a dark. That's all we could tell.

Q. As I understood you in your first direct evidence, you said the only thing you were able to determine in the first experiment was the

REDIRECT EXAMINATION.

QUESTIONS BY THE ACCUSED.

Q. You said you were quite a hunter, Colonel. Have you ever attempted to shoot at night in Texas here?—A. Yes, sir.

Q. Tell the court what you have done in that line.—A. Sometimes I shoot coyotes, and sometimes I hunt at night. Coyotes sometimes come around our place. And sometimes, out of pure savagery, I guess, I get out and shoot at night.

Q. What kind of shooting is this? Is it mechanical, or do you attempt to aim it?—A. Purely mechanical.

Q. You are not night blind in any way? Your vision is normal at night, is it not?—A. Yes, sir.

Lieut. H. A. WIEGENSTEIN, Twenty-fifth Infantry, a witness for the defense, was duly sworn, and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please state your name, rank, and present station.—A. Henry A. Wiegenstein; first lieutenant, Twenty-fifth Infantry; station, Fort McIntosh, Tex.

Q. Do you know the accused? If so, state who he is.—A. I do. Maj. Charles W. Penrose, Twenty-fifth Infantry.

QUESTIONS BY THE ACCUSED.

Q. How long have you been in the service, Mr. Wiegenstein?—A. Since May, 1896.

Q. Where have you served, Mr. Wiegenstein; in what parts of the country have you served?—A. I have served in the United States, in Cuba, and in the Philippines.

Q. How long have you been at Fort McIntosh?—A. I changed station from Fort Niobrara to Fort McIntosh in the latter part of July, 1906, and have been at that station, with the exception of a few months while I was on detached service.

Q. Have you recently made any experiments to determine the accuracy of vision at night, Mr. Weigenstein?—A. I have.

Q. When and where were these experiments made?—A. One experiment was made on the night of February 18–19, this year; another one was made on the night of March 11, this year, at Fort McIntosh, Tex.

Q. Taking up the experiments in the order in which you name them—take that of February 18 and 19. Tell the court, as briefly as you can, what arrangements were made, if you know, to have the experiments.—A. In making the preparations for this t
an arroya, or rather a series of arroyas which ran
other, to simulate the conditions of an alley as n
at the same time provide the factor of safety in
nition, so the firing could be observed by
firing. In this selection I arranged—as I s

After the firing terminated at the point B I again marched the detachment out by the same path to a road, and this road is an unfenced road running something in that direction as compared with the rest of the plat already explained (indicating direction almost parallel to the line drawn between the points of view Nos. 1 and 2). Before the detachment had cleared the arroya and come to the surface the officers stationed at No. 2 had moved to where this path intersected this roadway, at a point, for convenience, I will call "N." Some of the officers, as observers, posted themselves on one flank of this path; others on the opposite flank from 2 to 4 feet from the path. The entire party, in single file, in column of files, was marched between these officers, and as we passed between I observed that the officers carefully peered into the faces of the men separately—that is, from front to rear—as we passed in column of file, and after I had marched the column by I halted it a short distance beyond and came back to the officers at this point, N, and one of the officers remarked he would like to see white men marched by to see if he could detect the features or complexion—see if it would make any difference. At that stage I informed all the officers that there were not only white men in the party as well as colored men, but also a Mexican. I also assumed another point here, called "O." At the point O this detachment was halted and faced outward, forming one single rank, all facing to the front—or all facing in the same direction, I will put it—and the officers were then asked to go and pick out the Mexican and the white man. I wish to state there were 2 white men and 1 Mexican in the party of 11 armed. One white man had a rather pale complexion. The officers in marching by peered under the hat brims of these men as they passed along. The first white man was located in this manner as they passed along. The second white man was passed, and they passed to the opposite flank of this single rank and then came back again, and one officer stated: "If there is another white man here, I would say that this man is. He appears lighter than the others, but," he says, "I don't know"——

By assistant judge-advocate:

I object to going down as evidence the remarks of some other officer made at that time. That officer is present, and can be brought here and state just what his impression was at the time, and what he thought about it.

By counsel:

Go on with the story. We will introduce the other officers.

A. Then this man, I say, was identified in this manner. The Mexican—all experienced great difficulty in identifying him, and I will go on record myself as saying I don't believe he would have been identified——

By assistant judge-advocate:

I object to the witness stating opinions as to what he believes other people might or might not have done.

By counsel:

We make no point of it, but he clearly has a right to state it. Here is an experiment being made—we will clear it up—it is an opinion formed at the time, may it please the court. Here is an officer stating what other officers stationed there by him observed. It is clearly relevant; there could not be a case of opinion that is more pertinent than that. Of course, opinion evidence

Infantry. No attempt was made to get especially light men or especially dark men—simply called for a detail of so many men from each company. The civilians were all armed and dressed in dark-blue shirts, khaki trousers, leggings, and campaign hats, with the exception of one, and he, in addition to the other articles of uniform enumerated, had on a black shirt, as I believe is commonly called in civil life satinet or satin, black satin—otherwise his uniform was identical to the others already described.

Q. And the others?—A. The soldiers were dressed, some the same as uniform just described, some with khaki blouses on in addition, and, as I recall it now, 2 men with chambray shirts as issued by the quartermaster department.

Q. How were you dressed, Mr. Wiegenstein, yourself?—A. I was dressed in an olive-drab uniform, and in addition carried my saber and wore a cap.

Q. Did you carry a gun yourself that night?—A. Not that night; no, sir.

Q. Did you have on white cuffs and collar?—A. I did, sir.

Q. Did you observe this firing yourself; and if so, from about what distance from the men, and for what purpose?—A. I observed—I took special pains to see if I myself, stationed directly in center of the rear of this firing party, with my attention fixed on the faces of the men immediately in front of me, not more than one pace distant—that is, at the center—to see that if at the instant of discharge of the pieces, whether the flash of the pieces would enable me to distinguish features—that is, the complexion. I found that no matter how determined I fixed my attention on the faces, of the form of the faces, as they stood before me, that at the instant the piece was discharged my eyes involuntarily followed the flash, and before I could get mental control of my eyes, to bring them back to the parties firing, all light from the flash had disappeared. The flash was instantaneous and, as I say, the eye involuntarily left the part of the men I had my attention fixed on and tried to determine, and followed the flash.

Q. Mr. Wiegenstein, at the first firing point where you fired approximately 110 rounds—you said two clips to each man?—A. Approximately two clips to the man.

Q. In what direction were those shots fired—all in one direction?—A. All in one direction.

Q. What kind of a night was it, Mr. Wiegenstein, with respect to light?—A. With respect to light this part of the night the moon was what I would call about one-third full. I mean the term as applied to the conditions, not——

Q. You mean it was in the second quarter then?—A. It was passing from the first to the second.

Q. Was it starlight in addition?—A. It was clear sky.

Q. When you fired from the second point what was the direction of the fire and the nature of the fire?—A. The direction was parallel to that of the first fire from the first point.

Q. How were the men stationed with respect to the shadows cast by the moon Mr. Wiegenstein? That is, the shadow of the arroya itself, were they within or without the shadow?—A. In one c in the second position, about three men, as I remember, were in shadow of the arroya; the others were out in the light of

Q. Did you repeat these experiments substantially that night? If so, tell the court under what conditions.—A. They were repeated again that night after the moon had gone down.

Q. What were the atmospheric conditions at that time?—A. The same as previous, excepting as to light. Clear, starlight night.

Q. Would you call it a bright starlight night or dark starlight night?—A. Bright starlight night.

Q. Did you have the same men?—A. Had different men.

Q. Tell who you took this time.—A. This time we took none but colored men. The main idea of the second test after dark was to note if the effect of darkness—complete darkness, as far as we could obtain it—under conditions of a starlight night, if the flash was more pronounced, would enable us to distinguish what we had failed to do earlier in the night while the moon was shining.

Q. Did you use the same positions for observation and for firing?—A. Used the position for the squad A and B and the point of observation 2.

Q. How much firing was done at each point; do you recall?—A. To the best of my memory, five rounds at each place A and B.

Q. How many men did you have at this firing?—A. Eight men.

Q. Was the firing the same class of firing—volleys?—A. The same class of firing; two volleys from each clip and the remainder fire at will.

Q. Were the men facing in the same way, or did you change that in any respect?—A. I had to face the men in the same way as a measure of security.

Q. That is, the same manner in which you had faced them in the other tests?—A. The same as previously.

Q. Did you personally observe the effect of the flashes in the second test, Mr. Wiegenstein?—A. I did, sir; with the same results as experienced previously that night.

Q. Did you notice any difference in the flashes at all?—A. From my position, no. I was behind the squad again in this instance, and I noticed the same fact—that is, I could not keep my eyes from following the flash.

Q. Take up the next test you made on March 11. Tell the court what arrangements you made for that, if you made them.—A. On the night of March 11 I selected seven men—soldiers—one sergeant, and myself, for a second test, under starlight conditions. The men that night were all dressed in dark blue shirts, khaki trousers, leggings, and campaign hats, and I was dressed myself identical to the men. The sergeant, who would probably be described by a recruiting officer as light brown, I put a white collar around his neck and gave him my cap and put him in charge of the detachment. I took up my position in the line in the firing party, had the sergeant give the commands for firing, and I went through the exercises the same as the remainder of the firing party. This same test took place at the same points marked on the illustration, points "A" and "B," and the observation was from the point marked "2." After this firing terminated we marched out identically in the same manner as described for the other test on February 18–19, and officers, stationed out as observers, posted themselves to note if they could identify the indi-

viduals in the firing party by peering into their faces the same as before. From this part of the test we carried the test further under the conditions of light as furnished by the street lamps, issued by the quartermaster department, and as we find in some of our military posts. All this I had arranged with the officers previously, to place themselves in the second story of one of the sets of officers' quarters and look out into a side yard through a window, and I cautioned one man to move about in a careless sort of a manner, the same as men would naturally, if bent on trouble, and from this part of the exercises we again moved out into the street parallel to the front of the officers' quarters, and marched by between the officers' quarters and this street lamp, and the officers at this stage came to a window overlooking the street in front of the officers' quarters. We marched by and passed into the parade ground in front of the officers' quarters, and came back again between this same light and the set of officers' quarters, while the observers were seated on the front porch, and then marched back again onto the sidewalk and directly in front of the officers while seated on the front porch, this time passing within a distance approximating 10 feet—from 10 to 12 feet. This light is directly in front of this set of officers' quarters and approximately 50 feet away. I would like to add further that in this test the question of powder came up in my mind, so I inserted a shotgun into the firing party and used a shotgun ammunition, loaded with Hazzard black powder. Firing from the first position, marked "A," the shotgun was mixed in with the rifles in the firing. At the point "B," after the firing had terminated by the entire squad, I had the shotgun fired separately—that is, alone—two rounds. The flash from the shotgun with the black powder was decidedly longer and threw out much more light than the rifles. The effect was that partly of a pyrotechnic display—that is, the combustion did not seem complete up to the point of the muzzle, but continued to burn a slight distance beyond, making a momentary light. While this separate firing was being done with the shotgun at the position marked "B," I carefully looked in the direction of the man doing the firing to note if I could distinguish his complexion. I was unable to do so from my position, and there were two men on the same line between himself and my position.

Q. Could you detect anything at all with that large light in the way of clothing, or what could you detect? Tell us, as near as you can recall now, what you did detect by means of this long light.

By assistant judge-advocate:

I understand the witness at that time was marching in this detachment himself, was he not?

By counsel:

He so stated.

By assistant judge-advocate:

I don't see how he can testify, then, may it please the court, as to what was recognized at a distance by other people.

By counsel:

If the assistant judge-advocate will let him alone we will show you how he can testify. He was right there and certainly competent to testify as to what he saw.

(Question was read over, and was then changed by counsel to read as follows: Could you detect anything at all with that large light in the way of clothing, or what could you detect? Tell us, as near as you can recall now, what you did detect by means of this long flash that you describe of the shotgun.)

By assistant judge-advocate:

I thought you said long light in the post; I did not know you were talking about flash of the shotgun.

A. As previously stated, my attention was definitely fixed upon trying to distinguish features, but I do recall that the outline of the men was more clear, that I could tell they had on khaki breeches and also a dark-colored shirt. That was conveyed to my mind, in addition to the features I was looking for; I recall that, but, as I said before, my attention was determined on trying to determine, if possible, the complexion, so other features were not looked for, but I do recall as stated.

Q. Did any of these men wear hat cords?—A. They all wore hat cords; I had a cord on my hat.

Q. Could you or did you at any time detect any hat cords by means of any of these flash lights?—A. I did not.

Q. Will you tell us, as far as you know, who the observers were in the first series of experiments you prepared?—A. Lieutenants Blyth, Harbold, and Elser, Twenty-fifth Infantry; Capt. J. P. O'Neil, Twenty-fifth Infantry, now major, Thirtieth Infantry, and a civilian who was introduced to me as a Colonel Stucky.

Q. The same gentleman who testified here this morning?—A. The same gentleman.

Q. Who took part as observers in this second test, Mr. Wiegenstein?—A. Lieutenants Blyth and Harbold and Capt. E. A. Lewis, Twenty-fifth Infantry. I am not positive that another officer was present; I do know of those three.

Q. How were the men dressed in the second series of experiments? I don't believe you told us.—A. Yes. They were dressed in khaki trousers, leggings, campaign hats, dark blue shirts, outside of the sergeant, who was dressed in my blouse, with a white collar on. I would like to add further a point that occurs to me. I overheard these observers, while the test with the shotgun was made separately with the last two shots—one of the observers made the remark: "There is Wiegenstein, but you wouldn't know him if he didn't have on a cap," and the man who had on the cap was a colored sergeant.

Q. At what point was that?—A. At the point B, directly underneath the officers.

Q. Have you ever fired the service ammunition in any other gun than the service rifle?—A. I have, sir.

Q. Tell the court where and when.—A. At Fort McIntosh, Tex., on the 13th of March, the present year.

Q. What kind of a gun was that?—A. A Winchester rifle marked "30 U. S., model 1903." I think it is marked "30 U. S., model 1903," or "issue 1903." I think it is "model 1903." I could identify the rifle upon being seen a second time.

Q. Is that the rifle (handing witness a rifle)?—A. That's the rifle.

Q. Is this fired from this rifle by means of a clip, or how is it loaded? Will you show the court, please?—A. To load the service

where you had this experiment, was distant, and likewise the general situation there, the general situation of the houses and yard, if any, and street, etc., with reference to the light and the house—describe, in other words, the conditions or surroundings.—A. Well, the light itself from the house, considering the edge of the porch, just an ordinary porch about 7 or 8 feet wide, possibly more than that, is about 50 feet; approximately 50 feet, from 50 to 60—this distance is estimated, but I think it is approximately correct—and the quarters are two-story, with the ordinary porch, in front of the first story; then immediately in front of the porch is a narrow lawn leading to a concrete walk, and the concrete walk is approximately 3½ feet wide. The space between the walk and the edge of the porch is about 10 feet; then between this walk and the light is an ordinary driveway, a small stretch of grass. The lawn continues beyond the walk, between that and the street proper. In approximating, say, from the porch to the light, at about 50 feet—it may run a little bit over and it may be slightly under, but not much under if any.

Q. Well, are there any trees there, or near this light?—A. There are trees on both sides but no tree between the light and the house, on both sides, I mean, of the light, looking at it from the quarters.

Q. The light is in front of the house?—A. In front of the house.

Q. And the gentlemen who were conducting it were in front of the light, were looking in the front part of the house toward the men?—A. Well, part of the experiment was from the second-story window, overlooking the street, and part of the experiment was from the edge of the porch; that is, the ground floor.

Q. Now, tell the court how these men that you had passed by—about what distance each time?—A. Well, when the officers were in the upper-story window, considering the base of the building as behind them, I measured the distance and they were some, approximately, 44 or 45 feet.

Q. Yes?—A. And when the officers came on down to the stoop, or porch, the men were marched by within, approximately, 40 feet, and when they turned and came by the sidewalk they were, approximately—well, they were approximately 10 or 11 feet from the edge of the porch on which the officers were sitting.

Q. So they passed in front three times?—A. Three times.

Q. Now, have you made any, or been present at any, experiments that have been made recently with regard to the penetration and direction of bullets after striking such objects as wood, etc.?—A. I have.

Q. Where were those experiments made?—A. They were made at Fort McIntosh, Tex., on March 13 of the present year.

Q. And with what rifle and ammunition?—A. They were made with our present service rifle, Springfield, and also with the rifle introduced before the court this morning, Winchester.

Q. Why were those experiments made?—A. To determine, if practicable, the penetration and also the action of the bullets after striking the ordinary pine board, to determine whether the bullet would be deflected or would vary in its original course or if it would be shattered. The experiments were along these lines that it might be developed.

Q. Now, what did you use, or rather what material was used in

these experiments?—A. Mostly white pine—coal-oil boxes, the kind of boxes that the quartermaster's department receives its illuminating mineral oil in. There were a few experiments made in which we selected, I believe, what is known as "Texas red pine;" it is rather a soft pine, not as hard as the northern red pine.

Q. Now, [who] were making these experiments, Mr. Wiegenstein?—A. Lieutenants Blyth, Harbold, and myself, of the Twenty-fifth Infantry.

Q. How were the boxes arranged, Mr. Wiegenstein?—A. We arranged these boxes in various ways. In one instance we stacked the boxes against each other, noted the effect of the fire with the boxes packed against each other; in another we left air space between the rows of boxes, trying to represent the space as it would exist in an ordinary dwelling, giving about 12 feet between the walls.

Q. What was the penetration that you obtained, Mr. Wiegenstein, on these attempts?—A. The penetration was variable. Our test developed, where we could keep the bullet in the same course—that is, the highest we found where the bullet remained in the same course, as I remember it, was approximately 12 inches, but the bullet continued on beyond that. All the experiments that I observed in the width of the material used, it was not ample to get any further penetration, because of not having a wide enough object or one high enough.

Q. Now, did all of these bullets keep their rotary motion and the point in front or did they tumble?—A. Some traveled keeping the point in front, others tumbled.

Q. Did any that tumbled stop before passing through the wood that was in front of them—did you find any of them embedded in the wood?—A. We found two or three that were embedded in the wood with the point of the bullet pointed in the direction from which it was fired—with the base of the bullet embedded in the wood.

Q. Did some of them tumble so as to go through sideways?—A. They tumbled in all directions, giving in the appearance in the wood through which they passed of what is known as "ricochets."

Q. Did you have any of these strike the edge of the boxes?—A. Some struck the edges, others struck the boxes about the center—well, our experiments in striking were on all parts of the box, some on the edge, some on the top, some on the center—we tried to spread, to get the effect diversified as much as possible—that is, I mean the points striking so as to get the same material and different parts of the material.

Q. What, generally, was the effect upon the direction of the bullet as it passed through each thickness of wood, assuming these sides of the boxes to be one thickness? Now, as it passed through each thickness of that, what was the effect upon the direction of the bullet?—A. The effect, generally, was that the bullet was deflected from its original course, and in no two instances the same.

Q. Do you mean to say by that that the general rule was that the bullet was deflected from its course and with no regular rule as to the direction in which it was deflected?—A. Yes, sir; that is, the point that I wish to make is, that the bullet striking—a bullet following it in approximately the same spot—that is, within a quarter of an inch of the other bullet—in being traced through the other materials beyond it, say one bullet would drop and the next bullet

would strike at the same elevation, would raise, or might deflect to the left, or it might deflect to the right. The test showed all four of these; showed that some bullets would raise, others drop, and some deflect to the right, and others to the left; and the phenomenon further we traced—after each shot was fired all the shot holes were marked out—and it showed, or in some cases it appeared, that the bullets striking the—that is, considering the two bullets fired one after the other, and the hole previously marked out, that would then spread and then again converge—that is, one bullet would simply diverge in its fall after passing through various materials and come back and converge the line followed by the other bullet previously fired.

Q. Well, did you observe the effect where the bullet struck on the edge, as, for instance, assuming this to be a lintel of 4 or 6 inches, and where it struck the edge of that at an angle—you understand what I mean—where instead of striking perpendicular on the edge like that (illustrating) it struck on an angle? What was the general effect upon the course of the bullet under such circumstances?—A. Well, I remember some that struck on the edge, but I do not recall that they were on an angle. There were some shots that did strike, maybe, somewhat at an angle, but it was up in the material, and the deflection occurred in the course of the bullet passing through that material; but I also observed that a bullet striking on the edge struck as you illustrated first on the lintel in this manner (illustrating), that the bullet was deflected downward in some cases. In a case, again, being struck approximately in the same place, the bullet would travel into the material; would slightly raise and then dip again and then raise again during the same flight.

Q. Have you ever personally seen a bullet fired into a lintel of hard wood from the ground? If so, where and under what circumstances and what was the effect of it?—A. I did not personally see the bullet fired, but I investigated the results immediately after the shot had been fired and the case reported to me, in 1900, at a place called Candelaria Zambalos, Philippine Islands. One of our men was reported to me as having fired at a Spaniard, who was at outs with the soldier, through a window——

The judge-advocate:

May it please the court, as the witness says he did not see the injury upon the material, we believe that the answer of the witness is irrelevant and immaterial.

Q. Did you actually see where this bullet struck the lintel?—A. I saw where the bullet struck the lintel and picked up fragments of the bullet, with my fellow-officers—parts of the steel jacket and parts of lead.

The judge-advocate:

May it please the court, unless this was the same room as the room in question, it seems to me it is irrelevant. It could not have been a Springfield cartridge, I believe.

Counsel for the accused:

Well, it was steel jacketed. The evidence before this court shows that there was plenty of that ammunition used.

Q. Your investigation showed it was fired from the ground?

The judge-advocate:

We ask for a ruling on the objection made, may it please the court.

(The reporter read the question, as follows: "Did you actually see where this bullet struck the lintel?")

(The reporter also read the question and answer, as follows: "Q. Have you ever personally seen a bullet fired into a lintel of hard wood from the ground? If so, where and under what circumstances and what was the effect of it?—A. I did not personally see the bullet fired, but I investigated the results immediately after the shot had been fired and the case reported to me, in 1900, at Candelaria Zambalos, Philippine Islands. One of our men was reported to me as having fired at a Spaniard, who was at outs with a soldier, through a window——")

The judge-advocate:

Before the court is closed I desire to state that the objection is based, first, upon the ground that the witness did not personally see this before it was fired. Necessarily, it is a different kind of bullet from that found in Brownsville after the shooting, so far as we know, and the hard-wood lintel into which the bullet was fired is doubtless the ordinary building material used in the Philippines, and the hard wood, as everyone knows who has been there, the hard wood used for such purposes is very hard, and harder than that ordinarily used for building materials in this country, and the action of the bullet might be entirely different.

Counsel for the accused:

Neither has this witness seen, to my knowledge, any wood at Brownsville. We are putting him on here as an expert, so far as his personal experience goes, as to the penetration and direction of high-power bullets. We maintain that we have a right in rebuttal of the evidence given by the prosecution to do this. It has never been presented, we will admit, before this court that certain bullet holes were made in certain houses on any sort of proper evidence; but the court over our objection allowed evidence to be introduced as to that by Major Blocksom, and we have a right now to go into this to show whether or not the evidence given by this and other witnesses is probably, or can be, true under the natural, logical results of experiments that have been made with the bullets of the kind described. This is within the personal knowledge of this witness, and we purpose to follow that up with the effect upon soft wood, so as to show that whether hard or soft the general effect is the same.

The accused, his counsel, the reporter, the witness, and the judge-advocates then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce that the objection is not sustained, and the question will be answered.

(At request of the witness, the reporter read the answer given by him to the question objected to, as follows: "A. I did not personally see the bullet fired, but I investigated the results immediately after the shot had been fired and the case reported to me, in 1900, at a place called Candelaria Zambalos, Philippine Islands. One of our men was reported to me as having fired at a Spaniard, who was at outs with the soldier, through a window——")

A. I investigated this case, as I stated, immediately afterwards, and found that the bullet had struck in the timber resting across the lower framework of the building, and which is the support for the rafter. The technical term for this timber I can not give. I would call it a "stringer." This bullet struck in the timber near the bottom of it, and inside, looking at the timber vertically, it plowed slightly into the timber, described a curve, and came back down toward the floor.

Not only down, but outward. The bullet apparently after it came out of the timber from this direction came off the timber and downward and struck into the floor 4 or 5 feet away from the window from which the shot had been fired out of the room. Fragments of the steel jacket and pieces of lead were picked out of the floor by me in the investigation. The marks in the timber showed the curve described by the bullet after it struck.

Q. Now, taking the course of the bullet as it passed through several thicknesses of timber from 4 to 6 inches, say, was the course uniform at all or not?—A. It was not uniform.

Q. I think you had that in mind in your last testimony, where you said you had a wave motion of the bullet.—A. As I said, we had specimens in our experiments that showed the bullet to have a wave motion, not only lateral, but also in the vertical plane.

Q. Did you bring up with you a specimen of how a bullet passed through that had tumbled—the marks that it made in passing through that kind of material or under the edge of it?—A. I brought a specimen with me that not only shows the bullet tumbled, but also shows that after it struck the bullet curves to the left.

Q. Have you that in your possession?—A. I have.

Q. Will you show it to the court?—A. (Producing exhibit.) You notice the holes here, indicating the point of entry and the point of exit.

The president:

This was fired out of the Springfield rifle?

A. Out of the Springfield rifle, with Springfield service ammunition.

Q. This particular bullet that made this peculiar course through that, through the outer edge of the end of that box, had struck other material previous to striking this particular box, had it not?—A. It had passed through several thicknesses of this same material. I think three thicknesses of this same material. That material all checked up to ⅞-inch thick; that would make a little less than ⅞-inch material to pass through before striking this.

Q. I understand you to say that you had a number of cases in your experiments down there where the bullet struck the edge of this soft timber and did not penetrate through, but kept under the edge?—A. As your question stated, the side of the timber was passed in slightly and then it caromed off at an angle.

Q. Did you attempt in any of these cases to determine the point from which these bullets were fired by sighting through the bullet holes or from the direction of the bullet as it passed under the edge of this timber?—A. Yes, sir; I tried as near as I could be brought into the line with the indentation made by the bullet.

Q. Basing your answer upon your experiments there with various shots of this kind, I will ask you is it possible to determine the point of fire for any such shot?—A. It is.

Assistant judge-advocate:

Just a moment, please. (After consultation.) Go ahead.

A. Well, my experience in the tests referred to showed that it can not be positively stated that a shot came from this point, that point, or some other point.

Q. Will you explain to the court why not?—A. In these experiments that we conducted I sighted, as I say, as nearly through this indentation made by the bullet as I could, and I located the water tank at Fort McIntosh, and could fix my mind on it, and said: "Yes; that is directly in line with the water tank," and without changing the position of my eye, but looking along the same curve, I could also bring my vision through that same curve into line with the powder house, which is approximately 100 feet away from the water tank and directly in the rear of it; and the picture conveyed to my mind was that that powder house was directly in line with my eye and this curve inside of the box; then without changing my eye and looking through that same curve in that same position I could locate equally as well, and equally as accurately, an object equally distant from the right of this water tank. It all seemed to rest on whether I wanted to see the water tank, the powder house, or an object to the right, the powder house being to the left of the water tank; I could equally as well and equally as accurately see other objects in that vicinity without changing the position of my eye.

Q. It depended upon, as I understand you, what you wanted to see?—A. That is the way it impressed me.

Q. Well, now, did you actually make an experiment there with a man at the firing point and under similar conditions to determine whether, by looking through that curve, you could see the man at the firing point?—A. Not a curve in this instance, but material actually penetrated—it was a timber fired into at an angle; we saw the point of entry on one side and point of exit on the other side, drew a direct line through the tube, put a lead pencil behind at one end, so it would project, and a lead pencil at the other, sighted over the two, and couldn't locate the man at the firing point, because it carried the vision completely to the left, and so far to the left you couldn't see the man at the firing line—he was 45 feet away; the bullet deflected off to one side, and the same thing was fired at several times, and the same results each time.

Q. So that in none of the experiments you made in that particular timber did the bullet follow a straight course in the line of fire?—A. It didn't follow the original line of fire before contact with the timber itself.

Q. Now, about how far from the point of contact with the bullet was it to this water tank—in other words, what was the range that you gave the court here just now?—A. About 300 yards.

Q. Was that the lateral variation that you determined in that case, that 300 yards?—A. Well, I could give a lateral deviation, approximately, of 100 yards. I could pass—this powder house I speak of—I could pass to the left of the powder house with the same line of sight as I referred to previously, and my estimate would be that I could get a deviation from the same eyesight of 100 yards laterally at a distance of 300 yards away from my eye.

Q. I understood you to say in your other testimony that this shot when it struck such a piece of timber was just as liable to deflect downward or upward as it was to deflect to the right or to the left?—A. It was; yes, sir. I took careful measurements, and when it deflected—especially the bullet that had a perceptible wave motion because of the kind of material penetrated—we saw the place where that bullet, after having passed in this wave motion for a distance of about 4 feet,

suddenly took a jump in the same material of a horizontal distance of 1.4 feet—this bullet raised 0.8 of a foot in a horizontal distance of 1.4 feet by actual measurements.

Q. Was this still following its course, or was it a tumbling bullet?—A. In this case the bullet had tumbled very slowly; it tumbled apparently in the last material it struck; the edge there showed that the bullet had begun tumbling, but the inversion of the bullet was not complete; it was only just beginning, apparently.

Q. Well, as I use the word tumbling I mean that it had lost its line of fire?—A. That is, it had rolled back on itself?

Q. Yes, sir.—A. It had not.

Q. Is that the sense in which you use it?—A. That is the sense I wish to be understood as using it in—that the bullet was apparently changing in the last box it struck.

Counsel for the accused:

You may take the witness.

CROSS-EXAMINATION.

QUESTIONS BY ASSISTANT JUDGE-ADVOCATE.

Q. How long have you had this rifle you have shown to the court, Mr. Wiegenstein?—A. This rifle came into my possession—that is, my own actual possession—the first time on the 13th. It was in the hands of other officers previous to this, but came into mine on the day of the 13th.

Q. Do you know where it was purchased?—A. The history, as I have it, of the rifle——

Q. Do you know of your own knowledge where it was purchased?—A. Of my own knowledge, I do not.

Q. Was this wooden stringer, in which you marked the course of the bullet in the Philippines, in 1900—was that stringer made of very hard wood, similar to mahogany, that is used for building material over there?—A. No; this timber was not, because the timber was dressed. It was dressed on four sides, and those heaviest timbers, my experience over there was that they were used in their natural state; the very hardest they made no attempt to dress. This was, however, hard wood, considered generally.

Q. It was harder than any wood used for building material in this country, wasn't it?—A. No; I wouldn't say it was.

Q. I mean ordinarily.—A. In an ordinary frame building, where nothing but pine is used, it was.

Q. This wood, however, was of that heavy type of dark wood that they use over there similar to comajon or that family?—A. No; not similar to comajon. It might approach narra. It was, however, not narra. It was a dark wood, a hard wood. I won't attempt to say how hard, except it was not as hard as the timber you call the "comajon."

Q. You did not see the soldier fire this shot?—A. I did not.

Q. So you took his word for his position—where he was standing at the time?—A. The position, I had to take the man's word for it, that is true; but the surroundings bore him out in his statement, not that a soldier had fired the shot, but that it had been fired from the ground, because this building was the only building of its height

attempt to sight through a hole in the timber, but finding that the hole was closed, in any thickness you may say from 2 to 4 inches, that the material instead of being carried in front of the bullet was displaced and would close the hole after it, we located it, as I stated, by holding lead pencils on opposite sides, at the point of entrance and point of exit.

Q. Did you ever notice any variation that was greater than this one that you testified about with reference to the water tank and the powder house?—A. Well, that was the principal one. I remember there were others there we could have tried, but the one in question was the one that lent itself more readily to the test, because it was an exterior mark, and we didn't have to remove any material; it was in the position just as it was left after the bullet had struck it, and it lent itself also readily, but because of the elevation we didn't have to stoop very much to sight along the object, and we took it on that account.

Q. But there was no other test that you could have made that covered a greater variation than this one?—A. No other test that I made that I would say. There were some of these tests through the timber that would be a matter of opinion merely, which I believe were greater, but which were not determined except at short range.

Q. Was the bullet that described the curve in here (referring to exhibit) fired before or after the one that went more nearly in a straight direction?—A. They both made a curve. Well, there were bullets fired before we got this specimen—there were a good many shots after we got this specimen. We set this to one side after it was developed.

Q. Is this the work of two bullets, or just one bullet that went through sideways and then turned?—A. This was one bullet that practically struck with the point on and began tumbling.

Q. It practically tumbled in the wood, then?—A. It practically tumbled in its course.

Q. It must have been tumbling when it struck the wood, to judge by the appearance. Is that where it entered (indicating)?—A. That is the point of entry.

Q. And then it continued its tumbling motion as it went through here (indicating)?—A. Yes, sir; possibly that happened.

Q. And that timber that is introduced has the mark of two bullets, gone through here (indicating)?—A. One mark of a single bullet.

Q. And from the fact that the point of entrance here (indicating) is at least twice as wide as the thickness of the steel jacket of the bullet it is apparent that the bullet could not have been traveling in its normal direction with a regular rotary motion, but must have been tumbling more or less when it struck; is that not correct?—A. Well, that might be correct. I could state instances that that might happen by the bullet going point head on and being deflected when the point struck, and the base struck, enough to turn it like the hole is there.

Q. At any rate, this is the point of entrance?—A. That is the point of entrance.

Q. And as you notice, even that clean-cut point there is wider than the thickness of the bullet, so what is your expert opinion about

lamp, and the next time you stated when those officers came downstairs you were about 40 feet from there; that would make you still farther from the lamp?—A. Still farther.

Q. And the last time when you came by you were within 10 or 11 feet of these officers, and would be possibly 40 feet from those street lamps?—A. That is right.

Q. And lights on each side in these instances?—A. Yes, sir.

Q. Was there any instance in which you or your party walked by in front of those officers, but instead of passing between them and the lamp you walked by on the far side of the lamp?—A. We walked by on the far side of the lamp; yes, sir; going back into the roadway.

Q. How close did you come, then, to the light?—A. One time we came within about 40 feet of it. The other time I marched farther intentionally to go into the darkness as soon as possible. One of the times we were about 40 feet from the light on the opposite side.

Q. On February 18 you say the moon was about one-third full, you thought?—A. That was just an approximate estimate of mine. It went down about ten minutes after 1, I think, as near as our time check on it.

Q. Were there any clouds at all that night?—A. There were no clouds whatever.

Q. And the stars were out?—A. The stars were out. It was a bright, starlight night.

Q. In this canyon, or arroya, was there any brush at all?—A. Not down in the arroya on the bank.

Q. There was no brush down there that prevented the officers standing out from one or two points of your sketch (referring to blackboard) from seeing the soldiers below?—A. None whatever. The arroya—the bed of it—is absolutely flat and bare; the sides perfectly bare.

Q. Was the moon high enough that night so that it shone clear into the arroya, or was it low so that the arroya was in deep shadow?—A. The men were all out in the moonlight in the first position I gave those men.

Q. That is position No. ——. A. Is position "A" and the second position "B." Left—as the men themselves were passing, as I testified to, those men—there were about three men, approximately three, might have only been two—but just barely the left flank of the line was shadow.

Q. About how wide is this arroya at this point?—A. It is a variable width. At these points the arroya is about 25 feet wide—that is, the base of it, the floor, the bed.

Q. And the sides nearly vertical or not?—A. The sides are almost vertical.

Q. So that practically you may state that the arroya was from about 21 or 22 or 23 feet deep and about 25 feet wide. Is that about correct?—A. Repeat that, please?

Q. I say, so that the arroya is about 21 or 22 or 23 feet deep and 25 feet wide. I think you stated it was $21\frac{7}{10}$ feet or $20\frac{7}{10}$ feet.—A. At the points I gave this morning the height above a horizontal distance—and these were determined accurately by engineers' tape or measurements produced to the horizontal and heights determined vertically—and the highest point used in the observation at any time, I think, was 21 feet and 2 inches—I would have to look it up.

QUESTIONS BY THE PRESIDENT.

Q. What was approximately the total thickness of the material passed through by the bullets in your experiments?—A. I think, as previously stated, that the extreme thickness that we were able to obtain, not because of the regulation bullet not being able to penetrate farther, but because of the lack of width and the dimensions of the material, was about 12 inches. In this penetration the bullets traveled farther, and traveled beyond, and in some cases tore up the ground—we could see the dust—and in cases we heard the bullets singing through the air, but in the dimensions of the oil boxes and the materials we used we could not get an object wide enough and high enough to go beyond that thickness. The bullets were deflected, so we could not go beyond that point, and we were limited on that material and could not build any wider or higher.

Q. What was the distance between the muzzle and the first box struck?—A. The experiments were conducted at different distances—one 200 yards, 100 yards, 50 yards, 15 yards, and 40 feet—that would be about 13⅓ yards.

Q. What was the difference in penetration in wood between the Springfield and Winchester rifles, using the present regulation ammunition?—A. Well, the effects all seemed about the same, unless the matter of directness of the bullet seemed a little bit in favor of the Springfield—I mean this present rifle—or Winchester. Our results in firing the two rifles alongside of each other—we seemed to get shot after shot on a more direct line with the Winchester than we did with our own service Springfield. Whether that could be borne out in a large number of shots I am not prepared to say. This particular test only covered about 30 or 40 shots.

(Excused.)

(A short recess was taken by the court.)

Second Lieut. JAMES BLYTH, of the Twenty-fifth Infantry, a witness for the defense, was duly sworn, and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Please state your name, rank, and present station.—A. James Blyth, second lieutenant, lieutenant quartermaster and commissary, Twenty-fifth Infantry, Fort McIntosh, Tex.

Q. Do you know the accused? If so, state who he is.—A. I do; Maj. Charles W. Penrose, Twenty-fifth Infantry.

QUESTIONS BY COUNSEL FOR ACCUSED.

Q. How much service have you had, Mr. Blyth?—A. About eight years and six months.

Q. How long have you been in the Twenty-fifth Infantry?—A. Since October, 1903.

Q. October, 1903?—A. Yes, sir.

Q. Have you had occasion to take part in any experiments recently?—A. Yes, sir.

or recognize any complexion by the light of the flash, and when the report and flash came the eye was involuntarily closed and attracted to where the flash was and before the eye had time to travel back to the place the light had died out and you could see nothing.

Q. Did you determine at either of those points the complexion of any of the men who were taking part in the firing?—A. No, sir; we couldn't even see the rifles that fired the shots.

Q. Couldn't see the rifles?—A. No, sir.

Q. In the other experiment?—A. No.

Q. In neither experiment?—A. In neither one.

Q. Now, as to clothing; could you determine the clothing the men wore?—A. No, sir.

Q. How about the hats—could you determine the kind of head gear the men wore on these experiments at all?—A. I could see nothing of the men whatsoever; the flash of the rifle, that was all—just a flash.

Q. Now, tell us what occurred at the later meeting that night. First tell us what time that was.—A. The later meeting was about half past 12 when we went out. The experiment was made between half past 12 and 1.

Q. Had the moon disappeared at that time?—A. The moon had disappeared at that time. We waited for it to go down entirely.

Q. How was the moon at the first experiment?—A. It was one night from its first quarter.

Q. And how was the night?—A. It was a clear night, cloudless, and the stars shining brightly.

Q. Now, then, go on and tell us what the atmospheric conditions were at the second test between half past 12 and 1 o'clock.—A. At the second test it was the same, the moon had gone down. It was darker, if anything, but clear; the stars were still shining brightly when we took the second position to observe. It was the same as in the early experiments. When the flash of the first volley came all that appeared to me was a long row of legs just up in line, and the impression conveyed to me was that it was blue trousers. That suggested itself to my mind, knowing the soldiers were there. It was dark material and seemed to be long trousers. The only part of the body visible was below the waist.

Q. Now, as a matter of fact, what clothing did those men have on?—A. Khaki breeches and leggings.

Q. So that the impression created in your mind at the time was a false one?—A. Yes, sir.

Q. Are you familiar with the locality itself where these tests were made?—A. Yes, sir.

Q. Would you recognize it from the picture on the blackboard?—A. Roughly; yes, sir.

Q. Is that a fair representation of it (referring to diagram on blackboard)?—A. A very good one, sir.

Q. Were you at what is marked "No. 1" here with a cross, approximately?—A. Yes, sir; approximately.

Q. Mr. Blyth, you did not measure any of these distances yourself at all?—A. No, sir.

Q. You understood that Mr. Wiegenstein did that?—A. Yes, sir; he took the measurements the next day.

we could see nothing at all. That rifle that used the black powder was fired, and then we could distinguish Lieutenant Wiegenstein in the rear of the line with a light-colored suit and cap on. We remarked that it was Lieutenant Wiegenstein, but we wouldn't have known him if it had not been for his cap.

Q. What was this rifle that used black powder?—A. It turned out to be a shotgun afterwards.

Q. You didn't know it, though, until afterwards?—A. No, sir. Then the men were brought up from the arroya after the firing, marched along the rear of the officers' quarters——

Q. Before you go on to that, who was this man—did you find out who this man was?—A. After the experiments were all finished; yes, sir. Sergeant Stone, Company L.

Q. Company L what?—A. Of the Twenty-fifth Infantry.

Q. Well, go on and tell the court how you carried the experiments on out—tell the court what happened.—A. Well, Captain Lewis, Lieutenant Harbold, and myself went up to my room upstairs, looked out the side windows, where no lights were showing; the men were marched past underneath the windows, and with us looking out to see if we could identify any of them; we failed to do it. Then they were marched around in front of the house, with a light burning directly in front of the house.

Q. How far was that light from the house, Mr. Blyth? I understand that was your house. Was it?—A. Yes, sir.

Q. How far was that light from your house?—A. About 20 paces from the porch.

Q. Did you pace that yourself?—A. Yes, sir; ordinary steps.

Q. Well, go on.—A. They were marched between that light and my house; we were upstairs looking out of the front window. Then we went downstairs and sat on the porch. The men were marched past in single file on the sidewalk, which was about 5 paces or 5 steps from the porch. We were sitting on the steps, so our heads were about in line with theirs, with the light shining on them. We failed to distinguish Lieutenant Wiegenstein, who was in line himself.

Q. In either of these experiments?—A. In either of these experiments we didn't know who was there.

Q. Well, now, were they brought by closer than that later?—A. No, sir.

Q. What was the closest they were brought to you?—A. That was the closest they were marched past us, but we stopped them on the parade ground and went up to them. Then they were not in line at the time, so when I went along, within just 2 feet, I looked into each man's face. I saw one man who happened to turn his head—he made a little turn of the head, which made him look a little lighter than the remainder—and I found him to be Lieutenant Wiegenstein.

Q. You recognized him then only by the light turning on his face?—A. Yes, sir.

Q. These men that marched around two or three times, did they march outside of this street light?—A. Yes, sir; they marched outside of the street light, over beyond the parade ground.

Q. Do you know how far beyond the light, or could you tell?—A. I couldn't tell, because I couldn't see them. Lieutenant Harbold saw them over on our right; said they had just passed, and just

the inside and in through the plaster?—A. In through the plaster it deflected them from their course—went through the second partition.

Q. I don't want to bring out so much the deflection as the effect upon the bullet itself.—A. Well, we picked them up all broken up in some pieces.

Q. You mean to say in every case where they passed through plaster the bullet was disfigured?—A. Yes, sir.

Q. By passing through the plaster?—A. Well, we picked them up after they passed through partition and plaster.

Q. And in all these cases the bullets were disfigured?—A. Every one.

Q. Well, wasn't that true of practically all substances, except wood itself?—A. Except the wood itself.

Q. Now, did you, as a matter of fact, succeed in getting any bullets by having them lodge in wood?—A. No, sir.

Q. You did not?—A. No, sir.

Q. What did you use to determine the penetration through wood—the maximum penetration?—A. We had four partitions built, resembling the walls of a house. The partitions were seven-eighths of an inch thick; then about 8 inches; we had another part put up of the same thickness. We had those erected 12 feet apart.

Q. So as to simulate a room?—A. So as to simulate a room; yes, sir. Passing through a house, we found we couldn't stop the bullets that way, so we got a lot of oil cans.

Q. Do you mean oil cans or boxes?—A. Oil boxes, ⅞ inch between.

Q. Now, how many different pieces of wood did you actually get penetration through? How many pieces, I mean, do you recall?—A. No, sir; but I remember counting 24 oil boxes, besides these partitions and a big piece of red pine that was put up in the rear of it. And in all cases where the bullet went direct and went through them all we failed to get the bullet. It went straight through and kept on going.

Q. So that where the bullets went directly through the bullet kept on, didn't stop in its course, but retaining its rotary motion, you had to gauge that by some other substance than wood?—A. Yes, sir; by sand or some other substance than wood.

The president:

I would like to have the reporter read the previous question and answer of the witness.

(The reporter read the question and answer, as follows: "Q. Now, how many different pieces of wood did you actually get penetration through? How many pieces, I mean, do you recall?—A. No, sir; but I remember counting 24 oil boxes, besides those partitions and a big piece of red pine that was put up in the rear of it. And in all cases where the bullet went direct and went through them all I failed to get the bullet. It went straight through and kept on going."

Q. Mr. Blyth, what was the rule with regard to the direction of these bullets as they passed through the various substances you have spoken of—that is, confining yourself first to the wood where you used the oil boxes, etc.—what was the rule as to the direction as they passed through each of these?—A. That every bullet was deflected from its course after passing through this partition.

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of the upper box; the lower edge, when the first bullet struck it, went down, breaking, as it were, the skin—the upper skin of that lower box—traveled under it about 2 inches, then took an upward course about 6 inches, penetrated through the upper box without going all the way through, leaving the upper surface intact, without breaking it, ran under the skin of the box, then came down again 6 inches more, and came about 9 inches higher than the point of entrance. A few minutes later another bullet fired from the same point of entrance, the bullet struck the lower edge of the same box about 12 inches away from where the other one was shot; this time, instead of going down, it started down, took an upward course, and did the same thing.

Q. When you said 12 inches with the other box, you meant in——A. In a horizontal direction; instead of that bullet going up high, it goes down to the ground.

Q. You can sit down again, unless you have some notations. (Witness resumes seat.) What was the result of your experiments, if you made any, as to the deflection of bullets passing through 4 to 6 inches of pine?—A. They were all deflected from their true course.

Q. They were all deflected?—A. Yes, sir.

Q. In practically every instance?—A. Every case that we tried.

Q. Did you make any experiments to determine whether you could locate the position of the firing point?—A. Yes, sir.

Q. What was the result of your experiments in that regard?—A. It was impossible to do it.

Q. And why?—A. For the reason that you could not get your eye close enough to the mark to sight along it; if you did the mark would curve and your eye would strike that curve in a place as a matter of convenience.

Q. What do you mean as matter of convenience, Mr. Blyth?—A. Well, if you saw the fire—the way we took it we had a man fire—and if we wanted to locate him by looking along this curve we could do it; we could also with as great ease locate some other point.

Q. You could put him at some other point, could you?—A. Yes, sir. I remember that we marked every shot that went through the partitions, so there could be no mistake about any other shot fired afterwards. One shot went through the partition and grazed the outside of the next one. I went behind the partition, put my eye along this raised portion to see if I could line in the fire, and my sight came away in to the right. I then looked through the hole that had been made passing through the other one and found another hole virtually in line with it, and also in line with the firer; and I went up and inspected it and found it was already marked.

Q. That had been made by another distinct bullet, had it?—A. That had been made by another distinct bullet, and in sighting through the hole to bring this grazed portion in line with the firer I couldn't do it.

Q. Did you make any experiments as firer yourself?—A. Yes, sir; about 40 or 50 feet off I fired a shot through a 4 by 8 board, and he was measuring the angle——

Q. Who was "he"?—A. Lieutenant Wiegenstein. He was measuring the angle that the bullet had made in traveling, that had been deflected; after he had done that and marked the place where I had been firing from, I stepped off to one side and asked him to look

Q. Did you examine any of the lead shot marks down there?—A. Yes, sir.

Q. What houses did you examine them in?—A. The Leahy House, Cowen house, Garza. Some I saw in the Miller Hotel, but they were too high up; I did not examine them.

Q. Did you find any shots in the Leahy Hotel?—A. Yes, sir.

Q. Did you take them out?

The judge-advocate:

I object to any further testimony about shots in the Leahy Hotel, the Cowen house, or any other house in Brownsville until it has been shown what those shots were. Until that is done these questions are irrelevant and immaterial.

Counsel for the accused:

May it please the court, that is a good joke, one of the best I ever heard. Does the gentleman intend to claim that no shot marks had been made in the Miller Hotel?

The judge-advocate:

The gentleman will reply to that that an objection was interposed by counsel in the early stage of this trial to exactly a similar question.

Counsel for the accused:

And it was overruled by the court.

The judge-advocate:

It was not overruled by the court. Lieutenant Fitch was on the stand; I asked him about certain shot holes in the Leahy Hotel; counsel objected to; the objection was sustained, and Mr. Fitch left the stand. The record will bear me out.

Counsel for the accused:

We will let the court pass on it.

The accused, his counsel, the reporter, the witness, and the judge-advocates then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce the decision that the objection is sustained.

Q. Mr. Blyth, have you examined the street lights down in Brownsville?—A. Yes, sir.

Q. Tell the court what they were.—A. They were oil lamps of much the same type that are used by the Quartermaster's Department.

Q. About how would the burner compare with our lanterns?—A. With our street lamp, you mean?

Assistant judge-advocate:

We object to that as being leading, sir. I think the witness could describe it and compare it with any lamp or lantern, and, as the judge-advocate says, it is leading him by the hand.

Counsel for the accused:

We are perfectly willing to remove our hand, but we think we have a right to give a standard of comparison, may it please the court. We are all familiar with what the Government lantern is. I do not see anything leading about it. It is assuming that as a standard of comparison.

(The reporter read the question.)

The assistant judge-advocate:

I withdraw the objection.

Q. Did you attempt to use Springfield ammunition in it?—A. Yes, sir.

Q. Would it work?—A. No, sir.

Q. Did you have a Mauser out there?—A. No, sir.

Q. Now, you have made a statement with reference to the difficulty of locating the exact point from which a shot was fired by trying to line in the bullet holes through different pieces of wood. Now, isn't it a fact that at a distance of 100 yards you can locate within, say, 25 or 30 yards, the location of most of the shots fired?

Counsel for the accused:

Let me hear that question

(The reporter read the question.)

Q. I do not mean the distance from the bullet holes to the place where the rifle was fired, but the alignment or direction from which the bullet must have come.—A. If the wood is of any thickness and you are standing behind it, you can not see through the hole at all. If it is a grazing shot you can not get your eye close enough to it to get a good sight. We tried that—Lieutenant Wiegenstein, Lieutenant Harbold, and myself—with the firer 200 yards from us, and we found we could just as easily line in our powder house, which was off 100 feet probably to the right of the firer, and also some of the quartermaster's storehouses, which were probably the same distance to the left. Of course the chapel came into line, but that was at least 100 yards from the firer.

Q. So that in this case the greatest variation from the point where the bullet was fired—that was apparently about 100 yards, then?—A. In that particular case.

Q. In the other direction?—A. Well, I made another experiment later on with a grazing shot which carried farther than that. That is only one particular case that I spoke of.

Q. But, as a general thing, if the bullet is fired from a distance of 100 yards or less, can you not tell with reasonable accuracy the approximate line from which the bullet must have come?—A. No, sir.

Q. I do not mean to tell where the firer stood?—A. I understand. There are no two bullets alike.

Q. When you purchased that box of ammunition—by the way, will you please state just where you purchased it?—A. A. Deutsch & Bros.

Q. In Laredo?—A. Laredo, Tex.

Q. Did he have a large stock of it on hand, that you saw?—A. No, sir.

Q. How much did he have there?—A. He didn't have any, for the reason that the only man that used that ammunition had bought it all up. He told me he could get it very easily for me and sent off and got it by express.

Q. So he did not keep it there for the general public; only for one man there who used it regularly?—A. One man that had the rifle that used it.

Q. How long ago was it you purchased this box of ammunition?—A. It is marked (referring to notebook)——

Q. About how big a piece would be the average size; the size of a quarter, a dollar, or what?—A. Oh, no; probably 2 to 3 inches in diameter.

Q. And that was regularly the case, was it?—A. We found it so; yes, sir.

Q. Even the bullets that tumbled in their flight through this piece of wood that you arranged, did they keep on going all the way through?—A. Some were deflected after leaving the third partition and left the course—you could see where they struck the sand 'way over across the arroya.

Q. With reference to the first drawings you made, exhibiting the deflections there in passing through the three partitions of two bullets fired about the same time, was particular care taken to shoot the second bullet from just about the same place as the first one?—A. Yes, sir; it was shot from the same spot exactly, standing position.

Q. And the greatest deflection in that case of actual distance between the two holes in any one partition was 9 inches, and the least distance was 6 inches; that is correct, isn't it?—A. Approximately.

Q. So that the greatest deflection as shown by these diagrams and by your experiments in that case was 3 inches?—A. For the first two shots fired. We fired probably 50 shots after that, and no two were alike.

Q. There were always some deflections noted?—A. Well, greater than that. Some would go through two partitions and be deflected so as to go off altogether.

Q. How high were those partitions?—A. Four feet.

Q. Those that missed the third partition altogether were those bullets that entered the first partition there near the edge of the partition or were fired so they ranged upward, did they not?

Counsel for the accused:

We object to that question as not being properly formed. The testimony does not bear out such a statement.

Q. With reference to the bullet being deflected enough to miss the third partition altogether, will you please explain any cases that happened?—A. Well, we fired about 50 shots there; to say which case it happened would be hard to tell.

Q. Did you mark each shot in this case, too?—A. Yes, sir; with a pencil.

Q. On each of the three partitions?—A. On each of the three partitions—both the entrance and exits.

Q. What I want to bring out is that the shots that missed the third partition must have either been fired at such an angle that when they had gone in a direct line then struck near the edge of the third partition——

Counsel for the accused:

We object to that as not being the proper form. Let him ask from what direction they were fired if he wishes to; but it suggests the answer, is absolutely improper, and to state what he wants the witness to say is also improper. We have not any objection to asking a perfectly legitimate question.

Q. Will you please explain how it was, to the best of your opinion, as formed at the time, that these or some of these bullets missed that

(The reporter read the question.)

Q. By the guns referred to in that question I wish it understood clearly that I referred to the Springfield rifles that the men fired as they stood in the arroya. Is that correct?—A. Yes, sir.

Q. So that the flash of those guns was sufficient to enable you to see some of the objects within about 4 feet of them or 3 feet of them?—A. Of the guns?

Counsel for the accused:

I beg your pardon, the witness did not state he was within 3 feet of them.

(The reporter read the question.)

Counsel for the accused:

I submit, may it please the court, that the question is misleading. I got the impression that he intended to imply that the witness was within 3 or 4 feet. The witness was not; he was up at the place of observation.

Assistant judge-advocate:

I will ask that question again in a different form, so there will not be any mistake.

Q. So that at this time you could distinguish objects with greater or less clearness that were within 3 feet or thereabouts of the muzzles of the guns that were fired?—A. No, sir; the rifle itself was closer than the flash, and I failed to see it.

Q. But you say that you saw their legs?—A. The lower part of the body—just a row; it may have been tree trunks, anything, but what suggested itself to my mind was the blue trousers—row of blue trousers.

Q. Were the street lamps in Brownsville a good deal like that lamp that the experiments of March the 11th were conducted by?—A. They are not as strong; different shape.

Q. But by this lamp, on the night of March the 11th, you saw the squad of soldiers as they passed by beyond the light?—A. No, sir.

Q. Well, how far away?—A. They were between the light, not beyond the light.

Q. I thought you said that some one called your attention to the fact that they were going away and were then about 60 feet away.—A. That was after they had gone over to the parade ground; we failed to see them, and Lieutenant Harbold told us they had gone away across the parade ground.

Q. You did not see them that time?—A. No, sir.

Q. Wasn't it very dark down there in this arroya?—A. No, sir.

Q. On these various occasions?—A. No, sir; the moon was shining.

Q. But was it not darker down there than it was on the ground, on the natural surface?—A. No, sir.

Q. The men were all out in the——A. White background, almost white—the white sand was down there, and the reflection of the moon there.

Q. And there was nothing at all, from your point of view, that obstructed your vision?—A. No, sir.

Counsel for the accused:

I want to ask just one question.

Q. I do not recall, but I want to know whether or not the points of these steel-jacketed bullets that you found, that had passed through

THE PENROSE COURT-MARTIAL—Continued.

PART 8.

MARCH 16, 18, 19, AND 20, 1907.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., March 16, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocates. The accused, his counsels, and the reporter were also present.

The reading of the proceedings of March 15 was dispensed with.

Lieut. R. P. HARBOLD, Twenty-fifth Infantry, a witness for the defense, was duly sworn and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please state your name, rank, and present station.—A. Robert P. Harbold, second lieutenant, Twenty-fifth Infantry, Fort McIntosh, Tex.

Q. Do you know the accused? If so, state who he is.—A. I do. Maj. Charles W. Penrose, Twenty-fifth Infantry.

QUESTIONS BY THE ACCUSED.

Q. How long have you been in the service, Mr. Harbold?—A. I entered the United States Military Academy on June 19, 1900; graduated June 15, 1904; assigned to the Twenty-fifth Infantry; joined the Twenty-fifth Infantry on September 15, 1904, and have been with my regiment since that date.

Q. Have you recently taken part in certain experiments to determine the accuracy of vision between the hours of retreat, or sundown, and reveille, or sunup?—A. I have.

Q. When and where were these experiments made?—A. On the night of February 18 and 19 at Fort McIntosh, Tex., and on the night of March 11 at Fort McIntosh, Tex.

Q. Taking up the first, the night of February 18 and 19, who was present at the first experiment you made that night?—A. As observers—Maj. J. P. O'Neil, Thirtieth Infantry——

Q. He was then captain of the Twenty-fifth?—A. He was then captain of the Twenty-fifth; yes, sir. A civilian by the name of Stucky, Colonel Stucky he was called; Lieutenant Blyth, Twenty-fifth Infantry, and myself.

Q. Well, tell the court what part you took in that.—A. I was stationed with the gentlemen just named as an observer and watched for the flash of the rifles and paid especial attention as to the power of the flash and what could be seen by the flash.

Q. In what kind of a locality were these experiments conducted? What was the nature of the place?—A. The men who did the firing were placed in an arroyo, which was approximately from 20 to 25 feet deep——

Q. You need not attempt to give those distances; they are of record, having been measured and testified to. Could you recognize that arroyo if you saw a plat of it?—A. Yes, sir; I could.

on by and were halted and faced out, and we walked along the line and peered into the men's faces—looked at them carefully. The one man I thought was a mulatto at the rear of the company was a white man—blacksmith employed in the post. I went along the line to the upper end of the company and found the other man, who I recognized by a mustache he had, and instead of being a mulatto he was a Mexican teamster employed in the corral. And then I heard somebody make the remark there was another white man in the line, and I walked down again and failed to detect him, until I noticed the other officers standing around a man in the middle of the line. I then walked up to the man and studied him, and then recognized him as a man by the name of Bradbury, an ex-soldier of the Twenty-sixth Infantry, who was employed as a teamster in the quartermaster department.

Q. As a matter of fact, did you afterwards find out how this man was dressed?—A. I looked at the dress carefully when I made this last inspection and detected no difference in the dress. I thought they all had on blue shirts and khaki trousers from my inspection, and I later found out that Bradbury did not have on a blue shirt; he had on a black satinet shirt.

Q. Did any of the men that you recall in this experiment have on the light-blue shirt, what we call "chambray?"—A. None that I know of.

Q. Pass on now to the second experiment made that night, if there was one. Tell when it was made and the conditions.—A. We made a similar experiment about 1 o'clock that morning. The moon had then gone down; it was darker, but a bright starlight night. The results from the first position were about the same, except that when the flash occurred outline of a part of a man could be observed. I got the outline of the flanks right along their hips, but it was impossible for me to state how they were dressed or what they had on; I could see nothing of the rifle or nothing above the hips.

Q. Were these experiments repeated? State the conditions of the next experiments, on March 11.—A. On March 11 we went out to the same arroyo and took position No. 2, as indicated on the board.

Q. What time of night was this, about?—A. It was about a quarter after or half past 9.

Q. And the atmospheric conditions at that time?—A. There was no moon, but a bright starlit night.

Q. Any clouds in the sky?—A. No clouds that we could observe, and the stars shone brightly, as though not darkened by clouds.

Q. What occurred? Go on and narrate.—A. The men were over in their first position across the hog-back between the two arroyos and firing, and the same results as in our first experiment held. We could not see anything by the flash of the rifle, although we could get the outline of the men. The line looked to me like a black line extending away from me. I could not tell at that distance which direction the line was faced, or the men were faced, and only by the report of the—the flash of the rifle, could I tell which direction they were fired. After firing at this position they came across the hogback into the arroyo, directly under us and slightly in rear, and began firing here. While coming across the men could not be recognized, features or complexion, and when directly underneath us we could

Q. Where were these experiments made, Mr. Harbold?—A. The experiments were made at Fort McIntosh, Tex., and some of them were made at a place called Nye, Tex., about 5 miles north of Fort McIntosh.

Q. Who assisted you in these experiments, Mr. Harbold, if anyone?—A. Lieutenant Blyth and Lieutenant Wiegenstein assisted me. In the experiments at Nye, Tex., I made them alone, with the exception of the driver I had to assist in getting the bullets.

Q. What experiments did you make alone?—A. I made the experiment of obtaining penetration in brick at 200 yards, that distance not being possible at Fort McIntosh.

Q. What rifles did you use?—A. In all my experiments I have used the Springfield 1903 model; the Krag-Jörgensen 1898 model; the Winchester 30-40, model 1895; and the Winchester 30-40, 1903, which fires a cartridge similar to our present service cartridge.

Q. As a result of your experiments in brick, what penetration did you get with the service rifles?—A. I got the penetration of the width of the first brick in all cases and the second brick would stop every bullet.

Q. Was that the same with both the Krag and the new Springfield?—A. Yes, sir; it was the same with all the rifles.

Q. What penetration did you get with these rifles in a house? I think you said you used a house for one experiment.—A. Firing into a small frame house with a single room, about 12 feet in length, and then a shanty—or up against this small house—I found that the bullets would invariably penetrate the first wall, enter the second wall, and then split up into fragments, and some of these particles would pass out through the shanty, which was ordinary inch pine, and the others would be found sticking in the pine or lying on the floor.

Q. The substance passed through was what?—A. Ordinary inch pine for the frame and then a thin sheathing of lath and plaster about one-fourth to one-half inch, varying, and then went to the opposite wall, passed through the same sheathing of lath and plaster and another frame of inch pine—that was the two walls of the building.

Q. That was practically the penetration, then, as to the house, that and the plaster?—A. Yes, sir.

Q. With the ordinary weatherboarding outside?—A. Yes, sir.

Q. What was the effect there, Mr. Harbold, upon the direction of the trajectory, or, in other words, what was the effect as to deflection in passing through these various portions of the ceilings or walls?—A. The deflection was very irregular as determined by me, and after passing through and into the first obstacle then it would be deflected to some other angle, and no rule could be fixed as to which way it would go.

Q. Was or was it not a general rule that you got deflection in passing through each obstacle?—A. It was a general rule that each obstacle would give some deflection to the bullet.

Q. Did you find any bullets at all that passed through this class of obstacles that were not mutilated badly?—A. I succeeded in getting one bullet that passed through and was caught in a small hothouse in rear. This bullet was a Krag-Jörgensen bullet.

Q. By the way, at this point I would like to know if you have a

Q. Did you make any experiments by striking this along the edge, so as to get not a complete circle, but a groove, cut along the edge of it?—A. Yes, sir; in the course of our experiments we had at least a half dozen of these grooves made by the bullets.

Q. Were you unable to locate the man at the firing point through any such grooves?—A. I sighted through two of these grooves, and I could not locate the firing point. I could not tell by sighting through the groove from where the shot had been fired.

Q. Will you explain why not, Mr. Harbold, to the court?—A. In the first place, I could not get my eye accurately aligned with the groove, and in the second place, the groove was always curved or irregular; it was not a straight line, and at no time, to the best of my ability, could I get a line on the same place. My eye was merely an instrument of convenience; that is, I could look along the groove and I would find one line; I would look along again and my eye would strike some other obstacle; this both in the horizontal and the vertical.

Q. Would there be practically the same variation in both the horizontal and the vertical?—A. There was practically the same variation.

Q. Were you present in the court room here and did you hear the testimony of Major Blocksom with regard to the shots that passed through the lintel in the Yturria house?

By judge-advocate:

I would like to call the attention of the court to the fact that if he was, then counsel or somebody is guilty of a breach of faith.

By counsel:

Counsel wishes to deny any such allegation. This man was not a witness to anything that occurred in Brownsville and was introduced as an expert pure and simple, and it was necessary that he should be here in order to determine whether his experiments coincided with the other. The man knew nothing about the incidents at Brownsville at all, except what he read in the newspapers, and he was here for that purpose, and there is no breach of faith about it; could not be under any conditions. It is the rule in all cases that experts should be introduced to hear testimony.

By judge-advocate:

I object to the introduction of testimony upon this point, for the reason stated. The court made a rule at the beginning of these proceedings that all witnesses should be excluded from the court room both prior to their testimony and afterwards.

By counsel:

There was no rule made as to expert testimony at all, and I defy counsel to introduce any rule in which experts are not introduced in both sides by all practices.

By judge-advocate:

It is perfectly true that they are introduced by both sides in all practices, but the court has made the rule, and I object to any testimony being made before this court on points that have been testified to and have been listened to by this witness. There are a great many other things in the specifications besides the shooting up of Brownsville.

By counsel:

Now, we state again there has been no rule made about expert testimony, which rests on an entirely different basis, which everybody knows.

By counsel:

And I go on record as saying it was not necessary. The prosecution, if it knows the law, knows that it is practice, without serving any notice.

(Examination of witness continued.)

Q. I think you stated that you did fire some shots through this 4-inch thickness of pine, 4 by 10 I think you described it.—A. Yes, sir.

Q. Did you fire any at an angle?

By assistant judge-advocate:

As I understood it, these shots were fired through the greatest dimension of this piece of wood, through the 10-inch part.

By counsel:

You are misunderstanding it, may it please the court, because he stated distinctly they turned the 10-inch face toward it; do you remember that?

By assistant judge-advocate:

No; I didn't; I thought he testified the other way.

A. Yes, sir; there were shots fired at a very great angle.

Q. Go on and tell us how the various shots were fired at it.—A. We fired the shots into the timber, and then, with a rule, we took the line through the point of entrance and the firer and drew the line across the timber, and with the same rule we also drew a line between point of entrance and exit, and the angle on these two planes on the piece of timber amounted to about 2 inches along edge of timber, and the man who fired the shot was only about 20 feet from the timber.

Q. Did you have any shots through this timber in which you could draw the line from the point of exit and point of entrance and include the firing point?—A. None that we fired in this timber would do that. That is, I would like to state, that none that we fired at angles in this timber would do that. There was one shot we fired directly into the timber that made such a large hole in the opposite side that we could draw the line through these two holes and to the firer, but he was 20 feet from the timber at this time.

Q. You fired through these various cartridges—fired the three rifles, as I understand you—the new Springfield, the Krag-Jörgensen, and two forms of Winchester?—A. Yes, sir.

Q. How many lands are there in the Krag and the new Springfield?—A. The Krag-Jörgensen and the new Springfield each have the same number of lands, four.

Q. Were the four lands also distinguishable on bullets fired from the Krag-Jörgensen and the new Springfield in all the bullets you picked up?—A. On a number of specimens we caught the lands were very indistinct. There were at least four, and they looked as if there were more.

Q. Have you any specimens with you that apparently indicate more than four lands that you know were fired from either the Krag-Jörgensen or the new Springfield?—A. I have several specimens with me that to my eye looked as though they contained or had more lands than the number four.

Q. Will you show some of those to the court and explain in each case from what gun it was fired and through what material it passed?

Q. As illustration of the effect upon lands, we introduce No. 12, and I will ask you to describe it.—A. No. 12 is a Springfield rifle, Springfield ammunition, fired at the target of oil boxes; had a complete penetration of all the boxes and was caught in the earth in rear.

Q. No. 13, as illustrating the effect of the lands marks on the bullet. Please state what it was fired at and what it passed through and from what rifle.—A. No. 13 was Springfield rifle, Springfield ammunition, fired through the oil box targets, and the point of exit in this case was 10 inches higher than the point of entrance, and it was caught in a box of earth in rear.

Q. As illustrating Krag-Jörgensen bullet fired from a Winchester rifle, introduce No. 14. Shows the effect upon the lands also; please explain what it was fired at and what it passed through.—A. Krag-Jörgensen ammunition fired in the Winchester 30-40 at distance of 40 feet from the already-mentioned house; completely embedded in the sand in rear; that is, it passed through three walls and entered the sand in the hothouse in rear of the shanty. No. 15 is Springfield ammunition, Springfield rifle, fired at a range of 100 yards into the white-pine boxes. It penetrated eight thicknesses of them and was found in the earth in rear.

Q. As illustrating Krag fired into a brick wall from a Winchester rifle, introduce No. 16. Please state the circumstances.—A. Krag-Jörgensen ammunition fired from a Winchester 30-40 into brick wall at a range of 200 yards.

Q. What is the pronounced distinguishing characteristic between the metal-jacketed bullet of the new Springfield rifle and the Krag-Jörgensen?—A. Around the part of the bullet of the Krag-Jörgensen that is encased in the cartridge case there are three rings of canellures; they are crimpings on the jacket. There are three of these on the jacket of this bullet; the Springfield bullet does not have these.

Q. As a result of your experiment, did you find that the gun with only four lands invariably produced four, and only four, marks of the lands on the bullet?—A. Some of the results showed that marks on the jacket indicated lands, and to the naked eye on several of the specimens they could not be distinguished from the regular marks of the lands, and the total number of these would then make it greater than four.

Q. As I understand, the total number of marks on the bullets fired from a gun with four lands exceeded four lands in so far as the naked eye could determine?—A. In some cases it would.

Q. Then, in so far as your examination would enable you to determine, you couldn't tell positively that the bullet had been fired from a gun with four lands from the marks of the lands as you saw them?—A. If it had the four land marks on it I would state positively that the bullet had been fired from a rifle having four lands.

Q. Is or is it not true with a bullet that when you find an four with more than four lands on it you could determine from the number itself what gun it had been fired from?—A. With more than rejected lands on it you could determine the kind of rifle; that is, the number of lands in the rifle from which it had been fired. If you submitted the jacket to a microscopic examination, you could then get

Q. The two missing bullets from that, do you know of your own knowledge what was done with them?—A. Yes, sir; I have them. One of them I took apart so I could get the bullet——

Q. I mean——A. Out of that box?

Q. No; I mean the other box.—A. I don't know where those two bullets are in that box.

By counsel:

I will state to the court that those two are part of the exhibit introduced some time ago by the defense and identified by Major Blocksom as being the regulation ammunition. They were taken from that particular box.

Q. I hand you another box. Can you identify that and tell the court what it is?—A. Box of ball cartridges, caliber .30, for the Krag-Jörgensen rifle, manufactured at Frankford Arsenal. It was bought by me at Mr. Netzer's hardware store in Laredo, Tex. (Box marked "19.")

By counsel:

We introduce this at this stage and ask the court to examine the small label that is pasted over the front of it.

Q. Is any of that for sale now, Mr. Harbold, at the same place where you bought it?—A. I have heard not.

By counsel:

I would like to ask the court, if practicable—I have no idea how long the prosecution will cross-examine Mr. Harbold, but if practicable we would like to have this witness gotten through with and dismissed, because we know his services are very much needed at his post.

By judge-advocate:

On behalf of the prosecution, we can make no promises to the court as to when we can finish the cross-examination of this witness, and to begin it would be, I am afraid, to have to stop it in its very inception, because dinner time will roll around in the course of half an hour or an hour, and I doubt if we will be through the cross-examination in such a period.

Motion was then made by a member of the court that the court adjourn to meet at 10 o'clock Monday morning, which motion was seconded.

The court then, at 12 o'clock m., adjourned to meet at 10 o'clock a. m. Monday, March 18, 1907.

CHAS. E. HAY, Jr.,
Captain, Acting Judge-Advocate, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., March 18, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocate. The accused, his counsels, the reporter, and the judge-advocate were also present.

The reading of the proceedings of March 16 was dispensed with.

Q. As a matter of fact, you found out later they were all dressed in practically the same uniform?—A. In the first experiment they were.

Q. When the rifles flashed you could see dark lines that you knew must be rifles?

By counsel:

What period are you directing your questions to?

By assistant judge-advocate:

This is intended to cover the night of February 18-19.

By counsel:

And which period?

By assistant judge-advocate:

The first period.

A. That was in the second part of that experiment, when the men were directly underneath me; then I could, as I stated, by the flashes see the hips of the men—line of hips—and the rifles were indicated by dark lines or objects.

Q. With reference to this same period or immediately thereafter, and with particular reference to the man whom you took to be a mulatto at the rear of the detail as they filed by you near the path, and who afterwards turned out to be a white man, is it not true that he was pretty well burned and tanned?—A. No, sir; on the opposite, the man was very white; he is an Italian by birth and is not tanned as the rest of the white people are in that section of the country.

Q. The other supposed mulatto who turned out to be a Mexican, was he not pretty dark?—A. No, sir; he is a half-breed Mexican; his father is a white man, and he is about khaki color, yellow color; not dark as the Mexican is.

Q. But still his color differs but slightly from that of an ordinary light mulatto, did he not?—A. He was darker than many of the light mulattoes we have in the post.

Q. Now the other white man, or teamster, whom you didn't recognize as he passed by, is he not fairly well tanned by exposure to the Texas sun?—A. He is; he has a rosy complexion, sunburned, and ordinarily has a heavy bearded visage. His beard in a day's time will show very plainly.

Q. Is his beard dark?—A. It is a dark color.

Q. But his color does not differ particularly from that of the ordinary light-colored mulatto of whom you have several in your command?—A. Yes, sir; it is an entirely different color in daylight; when comparison is made it is an entirely different color.

Q. Did he have a day or two growth of beard at this time, so as to make his face look darker?—A. I don't know whether he had any beard at this time at all. I describe the man as I ordinarily see him driving the team in daylight.

Q. With reference to your experiments of March 11, you stated that while the men were coming across from A to B they could not be recognized—features or complexion. Is it not a fact that at that time they all seemed to be dressed alike, you could distinguish no

Q. Did the amount of deflection appear to depend to a greater or less extent upon the angle at which the bullets struck the wood?—A. That was the principal factor in the deflection, firing at that piece of timber.

Q. If a .30 caliber, steel-jacketed bullet had only four lands marks on it, equally spaced, would you be able to state positively whether or not it had been fired from a Winchester model 1895 or 1903?—A. If I had the bullet intact with the jacket not disfigured, I could state positively from what rifle it had been fired; that is, of the two rifles you mention, if it had been fired from either of those.

Q. If it had four lands on it, only four, and those were equally spaced, could it possibly have been fired from a Winchester model 1895 or 1903, which have six lands?—A. The Winchester will not give four lands; it will give six lands, as that is the number of lands in the rifle.

Q. (Same question repeated.)—A. No; it could not.

Q. By the way, in your testimony as recorded, where it appears you spoke of a 32-20 rifle, you mean by that——A. Thirty caliber, 220 grains powder.

Q. Did you ever see the cartridges mentioned on page 115 of the catalogue, and the description of which you read to the court Saturday?—A. I have seen them all; the steel-jacketed I have seen on the exhibit card of the Winchester Arms Company; the other cartridge I mentioned I have fired; I have also taken it apart and studied it carefully.

Q. Did you make any effort to buy cartridges like that in Laredo?—A. No; I did not.

Q. Did you here in San Antonio?—A. I did on Saturday.

Q. With what result?—A. There was none I could find in the town.

Q. None you could find in the town of San Antonio. Is it not true this cartridge has been put upon the market only very recently?—A. No, I don't think it is; I think it had been on since the rifle for which it is made has been manufactured.

Q. Those steel-jacketed bullets are not commonly kept for sale in gun stores in small towns in this section of the country, are they; they use the soft-nose bullet almost all together in this country?—A. The soft-nose bullet is used for game.

Q. As a matter of fact, is it not almost impossible to obtain steel-jacketed .30 caliber bullets in this country?—A. It was almost impossible in the six or eight stores I visited in this town; however, they told me they had had them before.

Q. And they could get them for you?—A. Yes.

Q. Is there any difference whatever in size, length, weight, or shape between the ordinary Springfield full metal jacketed bullet now in use by the United States Army and the bullet described on page 115 of the Winchester catalogue, which has no canellures and can be fired from the Krag—is there absolutely no difference between them?—A. There is a difference, and the difference I could detect when the bullets are intact; that is, before the cartridge has been fired, but in my experiments, in all my experiments, I found after the cartridge had been fired the bullet was so much cut up and marked that the different points that exist in the bullets intact would probably be eradicated.

Q. That he dug out of the door?—A. I don't recall that; whether he did or not, I don't know.

Q. With reference to alignments of bullets; was any effort made at this house to ascertain by means of running a wire through the first point of entrance of the bullet in the exterior wall of the house and the first point of exit—that is, where it came out through the plaster on the inside—was any effort made, by running a wire through those two holes to determine the direction of the fire?—A. No; we didn't use that method. The method we used was to take the height of the bullet hole from the floor; the deviation in the vertical was obtained in that way; the deviation in the horizontal, we approximated that by a line of sight.

Q. By the way; were any of your experiments when you shot through the oil boxes conducted with soft-nose bullets?—A. They were not.

Q. All the bullets that have been exhibited by you before the court were full steel-jacketed bullets?—A. They were.

Q. So that your method of alignment was not particularly accurate in itself?—A. No, it was not; for the reason that the deviation to us was so apparent that we did not need an accurate alignment.

Q. Did you ever get any ammunition, other than Krag-Jörgensen ammunition, that you could fire through the Krag-Jörgensen?—A. I have bought the metal-patched Winchester bullet that will fit the Krag-Jörgensen.

Q. I mean full metal-jacketed bullets.—A. I ordered a box of that from the dealer in Laredo, but when I came up here it had not yet arrived.

Q. He didn't have it in stock in Laredo?—A. No; not at that time.

Q. He couldn't get it in San Antonio?—A. I don't know; he does his dealing direct with the firm, and sent to them.

Q. So you had to send to New Haven, Conn., to get this ammunition, the only steel-jacketed, .30-caliber ammunition, as far as you know, that can be used in the Krag-Jörgensen; is that right?—A. I think he sent there; I don't know.

Q. Is there any other rifle you know of, except Winchester, model 1903, that will fire Springfield ammunition provided for the Springfield rifle, and the Springfield rifle itself, of course?—A. The Winchester people guarantee that ammunition for the different sporting rifles mentioned in their guaranty. That is all I know.

Q. You do not know, however, whether any of these other companies have up to date manufactured any rifles that are capable of taking those cartridges?—A. I do not.

Q. With reference to the marks of the lands on the bullets, I believe you stated that in some instances it appeared to you upon examining a bullet fired through a Krag-Jörgensen or Springfield, that it had more than the marks of four lands on it, is that right?—A. Yes.

Q. But upon close examination you could tell, could you not, whether or not it had been fired from a rifle that had only four lands?—A. Not in all cases by looking at the bullet. By putting it under a glass the impress of the lands could be found and the exact number determined.

Q. Was it absolutely necessary to use a glass in order to do this?—A. In some cases it would be; some of the specimens I had.

By counsel:

Simply a statement to the court, explaining why we have not taken steps to get it before. We find that on June 17, 1903, there was issued to the governor of Texas 11,161 of the rifles known as the model of 1903, and, as I assume the judge-advocate will object to this going in in this form, we will have to ask, either by wire or otherwise, that we be furnished this in proper form to be placed before the court. There was ammunition likewise issued at various and divers dates previous to the time of this occurrence.

By president of court:

Is that cited also in this report?

By counsel:

Yes, sir; it is all cited there; and, as I stated, the reason we had not taken steps to procure this in proper form, we assumed that being an official report, and furnished the judge-advocate under the seal of the War Department, it would be admissible.

By president:

Do I understand the judge-advocate objects?

By counsel:

He just informed me informally that he should object to its going in in this shape.

By judge-advocate:

Yes, sir; if not properly identified. And I also informed counsel that the Purdy report, so called, which I had received, was not under official seal of the War Department and, therefore, my copy is not competent, either.

By president:

Do I understand request of counsel is that it be obtained?

By counsel:

Yes, sir; we would like to have that obtained to show that issues were made. We suggested wire because we know it is the desire of the court to get through with this matter.

By president of the court:

If there is no objection, the judge-advocate is requested to wire for information on this subject.

By judge-advocate:

With all due respect to the court, sir, I would suggest that counsel procure the evidence himself, although I am willing to send the telegram if court directs.

By counsel:

We are perfectly willing to do that, may it please the court. The reason we suggested that the judge-advocate send the telegram is that it would relieve us from all embarrassment of having it identified; we would have to ask otherwise for it under the official seal of the War Department.

By president of court:

The judge-advocate will ask the military secretary of the department to wire for the information.

By judge-advocate:

I don't exactly understand what information is desired by counsel.

By counsel:

We want to show exactly what Springfield rifles and Springfield ammunition had been issued to the State of Texas by the War Department previous to

munition is covered in the same way. We only use the rifles to illustrate the class of information we were asking for.

By assistant judge-advocate:

It is a slight error, possibly, but will have to state to counsel that it is under the heading 1904 and not 1903.

By counsel:

I beg your pardon, it does change the date, which is 1904, but it is prior to August 13, 1906.

By assistant judge-advocate:

This, if I understand counsel correctly, refers to the Springfield, model 1903.

By counsel:

That's what the report says.

By assistant judge-advocate:

I fail to see anything about Springfield rifle or ammunition here other than—the rifle talked about, so far as I can see, are referred to as model of 1903 rifle. I can find absolutely nothing to say they are Springfield rifles, and inasmuch as the Regular Army itself did not receive these rifles until just a short time before this Brownsville affair, it hardly seems to me that they would be shipping to individuals and to various governors of various States, a period of two years before, the same rifle that is now in use by the Army. It does not seem reasonable to believe that any shipment of Springfield army rifles, 1903, was made to the governor of Texas two years before the regular troops here received them. It is not evidence in any case.

By president:

Before taking action I think it would be well to have it taken in form that would prove acceptable to the judge-advocate, and I think it is the wish of the court, without doubt, that the matter be settled with the least possible delay, but any action that does not meet with the approval, or acceptance rather, of the judge-advocate would only lead to further delay in obtaining proper data for identifying the information required.

By counsel:

We will look into it a little further and if it is not that particular model we will make no further point about it. It says model 1903, and we assumed that was the model.

By president:

It is suggested you might obtain that information from the adjutant-general, State of Texas.

By counsel:

We will be glad to confer with the judge-advocate on the subject.

ALEXANDER ASH, a witness for the defense, was duly sworn and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please state your name, residence, and occupation.—A. Alexander Ash, my name. Kansas City, Mo.

Q. And occupation?—A. Packing house.

Q. Do you know the accused? If so, state who he is.—A. Yes, sir; Major Penrose, sir.

Q. Here is the line of soldiers' barracks, running from the Rio Grande River to B Company, the nearest to the river up to the vacant set, the farthest from the river.—A. Yes, sir.

Q. This is the hospital to the east.—A. Yes.

Q. And southeast of the hospital is line of buildings you mention—commissary building, quartermaster building, and various shops.—A. Yes, sir.

Q. And baker's shop in here. Will you just describe from this map how you walked around that post, No. 4?—A. As near as I can, I will explain that to you by this map. The map is not exactly as the post is situated.

Q. All right.—A. This is the commissary. I was coming around down here.

Q. You walked around the commissary?—A. Yes, sir; then by this shop.

Q. By this shop, in between the noncommissioned officers and shops?—A. Yes, sir; in between the noncommissioned officers' quarters and shops, and come on back around by the cavalry stables and up by the baker's shop and around.

Q. After passing between the noncommissioned officers' quarters and the shops you passed around on that road?—A. That comes around by the baker's shop.

Q. And you kept those various buildings on your left?—A. All those buildings—this was the cavalry stables—kept this on my right coming back.

Q. But the bakery, commissary, and quartermaster's you kept on your left?—A. Yes.

Q. And the noncommissioned officers' quarters on your right?—A. On my right; yes, sir.

Q. In walking your post that night did you hear anything unusual?—A. Yes.

Q. What was it?—A. About 12 o'clock I heard a couple—two shots over from my post; I was around about the quartermaster building then.

Q. Can you describe the general location of those two shots you heard?—A. As near as I could, I would say it was over to that road, over to the right from me, as near as I can say.

Q. Where was the general location with respect to the hospital?—A. Off to the right of the hospital.

Q. Was it near that road that divided——

By assistant judge-advocate:

I object to this as a leading question.

By associate counsel:

May it please the court, I am perfectly willing to modify that question. It is purely descriptive, and if the witness can give me the information, or give the court the information without unnecessary delay, as to just the location he wishes to mention, I am glad he should do that. It is only just to save any delay about him wandering about locations that I ask the question in that way.

Q. What do you mean by the right; do you mean the right as you were walking down your post toward the hospital?—A. Yes, sir.

Q. Would you attempt to fix definitely the location of those two shots?—A. No, sir; I would not.

that point. I, therefore, object to the question on the ground that it covers matter not included in the direct examination.

By the assistant judge-advocate:

May it please the court, this question, it seems to me, is upon matter that is relevant, and the fact was brought out in the direct examination that this witness was down there for a period of a couple of hours only three hours before the shooting and, inasmuch as it appears that he has made other affidavits in which the actions of the people on that night in his vicinity were brought out, it seems to me that it is relevant now, that throughout the entire case the attitude, or the necessity of finding out from all witnesses possible as to the state of feeling both on the part of the men and on the part of the townspeople has been acknowledged by the court, and I ask that this question be allowed.

By associate counsel:

May it please the court, unless the prosecution is able to show some connection between this matter and the matter at issue I still object to the question, unless he shows it is of such nature as to have caused the report by this witness to any officers at Fort Brown, particularly to Major Penrose, I can't see it has any bearing on the case. As I say, it is an extended investigation on a collateral point, in which the witness has appeared credible throughout that investigation.

The accused, his counsels, the witness, the reporter, and the judge-advocates then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce that the objection is not sustained.

Q. State what these insults or jeers were and when they occurred.—A. Well, at first there was a man walked up and—I don't know who he were, but the man that stays there at the wharf collecting revenues, or whatever he is—and he wanted to know from this man what was my business there, what was this negro's business there, and the other man says, "I guess he's on duty, he has got his belt on," and the other man says, "Why don't you run him away from here?" He says, "I am not going to bother him; he is attending to his own duty." Later on a crowd come up and wanted to know "What that damn nigger was doing around here, anyway; he ain't got any business around here; ought to run him away." That's all they said to me insulting.

Q. Did you report this to the corporal of your relief?—A. No, sir; I reported to no one.

Q. Did you report it to anyone prior to the time you made out affidavit before representative of the Constitution League?—A. No, sir.

Q. How many shots did you hear from the general direction of Allison's saloon?—A. I could not say whether it was two or three; may have been three.

Q. Were they pistol or rifle shots?—A. I couldn't say whether they was pistol or rifle shots.

Q. With reference to the shooting you heard after that. Can't you state a little more definitely as to its location, as it appeared to you at the time?—A. No, sir; I can not.

Q. Did you ever locate it as coming from the vicinity of the rear of the barracks?—A. I don't understand you, sir.

Q. Did you ever locate this shooting as apparently coming from the vicinity of the rear of the barracks?—A. No, sir.

Q. And to the best of your recollection and belief nothing more passed between you two at that time?—A. Yes, sir.

Q. Did you say anything to him about having been insulted down at the wharf?—A. No, sir; I did not say anything to Corporal Madison. Not at that time I didn't say anything to him.

JOSEPH H. HOWARD, a witness for the defense, was duly sworn, and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please give your name, residence, and occupation.—A. Joseph H. Howard; Louisville, Ky., No. 812 Twelfth street.

Q. Occupation?—A. Laborer.

Q. Do you know the accused? If so, state who he is.—A. Major Penrose, sir.

QUESTIONS BY THE ACCUSED.

Q. Howard, have you ever been a soldier?—A. Yes, sir.

Q. When were you enlisted?—A. I was enlisted the 7th of November, 1903.

Q. Then you were serving in your first enlistment last August?—A. Yes, sir.

Q. Where were you on the 13th of last August?—A. I was sentinel on post, sir, at Fort Brown.

Q. You were stationed at Fort Brown, were you?—A. Yes, sir.

Q. Then you were on guard on that date—the 13th of August?—A. Yes, sir.

Q. What relief were you on?—A. First relief.

Q. And who was the corporal of that relief?—A. Corporal Wheeler.

Q. What post were you on?—A. Post No. 2.

Q. And where is post No. 2?—A. Post No. 2 extends around the soldiers' barracks.

Q. And how did you walk around that barracks?—A. Keeping the barracks to the left.

Q. Did you go out on a patrol that night?—A. Yes, sir.

Q. What time did you go, and who was in command of the patrol?—A. Corporal Wheeler was. I went out on patrol, I guess, about half past 7 o'clock; don't know exactly what time it was.

Q. Did you get any special orders that night as a sentinel?—A. Yes, sir.

Q. Tell the court what they were.—A. Special orders was to allow no enlisted men out after 8 o'clock.

Q. What time did you go on post that night?—A. Went on post at half past 10 o'clock.

Q. And you would naturally be relieved at 12.30?—A. Yes, sir.

Q. Did you hear anything unusual while you were on post that night?—A. Yes, sir.

Q. What was it?—A. This shooting—shooting over in the town.

Q. Where were you when you heard this?—A. I was in rear of the soldiers' barracks, at the interval between B and C Companies' quarters.

CROSS-EXAMINATION.

QUESTIONS BY ASSISTANT JUDGE-ADVOCATE.

Q. Did you ever testify before the Senate committee?—A. Yes, sir.

Q. When?—A. Eleventh of March.

Q. Eleventh of March?—A. I think it was the 11th.

Q. Where were you born and raised?—A. Columbus, Ga.

Q. You state that you were in rear of the company barracks between B and C Company quarters at the time the shooting began. Is that correct?—A. Yes, sir.

Q. Now state again—you have already stated it, but state as clearly as you can—the location of those first two shots.—A. It was down in the road toward the vacant set of quarters.

Q. At a distance of about how far from where you were?—A. I don't know how far it was.

Q. Was it 50 yards, or 100, or 150, or what?—A. It was farther than 150—about 400 yards, I guess it was.

Q. These were the first shots you heard?—A. Yes, sir.

Q. And they all came from that location?—A. Except the fusillade; it was up in this alley.

Q. But all the first few shots came from this point about 400 yards up this road, you say. Is that right?—A. Yes, sir.

Q. How many of these shots were there all together that you heard at this distance up the road?—A. I don't know; I didn't count them; I couldn't state how many.

Q. Were there two or three, or how many?—A. I am guessing at it when I say two or three; I don't know how many it was.

Q. You didn't hear any single shot before that?—A. They was not all together; one after another.

Q. But they all came, it seemed to you at the time, from about the same neighborhood?—A. Yes, sir.

Q. And there were no other shots fired at all until the fusillade began up the alley?—A. Yes, sir.

Q. Did you make an affidavit at Fort Brown, Tex., on the 20th of August, before Captain Lyon?—A. Yes, sir.

Q. Did you state then, "The first thing that occurred that was unusual was a shot fired in the road opposite where I was at the time on my post, opposite the interval between B and C Company quarters?"—A. Yes, sir.

Q. So that on that date you testified that the first shot was fired in the road opposite where you were at the time, between B and C Company quarters?—A. The first shots was fired in the road. I didn't mean exactly opposite from where I was at; the road is opposite from where I was at, but they was in the road up that direction.

Q. You made the statement, however, as I read it to you, did you not?—A. Yes, sir.

Q. Did those first few shots sound like pistol or rifle shots?—A. They sounded like rifle shots.

Q. How about those you heard up the alley?—A. All of them sounded the same.

Q. Now, in that one did you state as follows: "At about 12.10 on the morning of the 14th, when between C and B Company barracks, I heard a single shot, then five or six, and then a regular fusillade. The shots seemed to come from the street in the rear of the brick wall back of B Company barracks." Is that correct?—A. Yes, sir.

Q. How long did you wait for the corporal of the guard or the relief to come to you after you had given the alarm by firing your piece and calling for the guard? How long did you wait there in front of the interval between B and C Company barracks?—A. About two minutes, I guess.

Q. I haven't your testimony of this morning, but my recollection is you said it was about thirty seconds from the time of the first shot until you gave the alarm. Is that correct?—A. The first shots I heard there in the road; yes, sir.

Q. The very first shots you heard until the time you fired off your piece and gave the alarm with that was about thirty seconds. Is that right?—A. Yes, sir.

Q. And why didn't you fire your piece more than three times?—A. Because the last time I fired my piece—why, the sentinel at the guardhouse—not the sentinel, but the musician at the guardhouse—he was sounding the call to arms, and I knew the people over at the guardhouse—I knew they had heard me.

Q. You fired those three shots one right after the other, did you?—A. Yes, sir.

Q. Now, in your testimony before the Senate committee, on or about the 11th of this month, did you state as follows——

Counsel for the accused:

One minute. What is the purpose of this?

Assistant judge-advocate:

This is for the purpose, may it please the court, of endeavoring to show that this witness made different statements on two different occasions.

Counsel for the accused:

We have no objection.

Q. Question on page 95: "About how long an interval was it between the time you heard the first two shots and the time you fired your three shots?—A. About four minutes, I guess. Q. About four minutes?—A. Yes, sir." Is that correct?—A. I gave the alarm twice. It was once over in the reveille barracks, and then I came over on the front side, on the parade-ground side of the barracks, and gave the alarm again. That is when I discharged my piece.

Q. Yes. You state here, I understand, that it was about thirty seconds from the time you heard the first shot until you gave the alarm by firing your piece three times. You stated before the Senate committee, according to the report as I have just read it, that that same time was about four minutes. Did you so state before the Senate committee?—A. (Pausing)——

Q. Did you so state before the Senate committee?—A. Yes, sir.

Q. Now, how far off the alley did this fusillade of shots seem to be—how far from you, or how far from the interval between B and C Company barracks?—A. I don't know, sir, exactly, how far it was.

Q. And he was there when the firing began, at B Company sink?—A. At the time of the fusillade; I remember his being there and driving off.

Q. And you are sure, at the time of the fusillade, he was near the sink that B Company uses?—A. Yes, sir.

Q. You are sure it was not in front of B Company's barracks?—A. No, sir; it was not in front.

Q. And wasn't right up close to either end of the barracks; you are sure his cart was there at this sink, are you?—A. Yes, sir.

Q. Did you see him emptying any ash can there that night?—A. No, sir.

Q. If he said you passed him while he was emptying an ash can right there, is that true or not?—A. I don't know, sir.

Counsel for the accused:

Wait a minute. We object to that; he said he did not see him. It is no fair examination to make this witness say another witness is telling an untruth.

Q. How close to the rear of B Company's barracks did your beat run?—A. My beat was right by the side of the soldiers' barracks, right by the quarters.

Q. So that if you walked on your beat in the rear of B Company's barracks, how close to the building would you be?—A. As close up to the building as I could get, if it was right along by the side of the building——

Counsel for the accused:

I make a motion that this question be stricken out. We have already objected to it, and we think that we should be given an opportunity to object to questions; and we ask that counsel be so instructed that this form of cross-examination is not proper and we do not wish it to be so conducted. We have a right for our objections to be interposed in due time, and when counsel gets up to make an objection he is entitled to a respectful hearing. We move that that be stricken from the record; we make the motion to have it struck out.

Assistant judge-advocate:

May it please the court, when counsel objected to that question I recognized the facts that possibly there were valid grounds for the objection, and instead of getting up on my feet in a formal announcement that I withdrew the question, I started on an entirely different question.

Counsel for the accused:

Certainly, and he knew—must have known—there had been an answer recorded, and we object to it. He must have known it.

Assistant judge-advocate:

It is really immaterial whether that question remains of record or not, except that it has been, I believe, the rule of the court not to expunge the record.

The president:

I ask you if you withdrew the question

Assistant judge-advocate:

I do withdraw the last question.

Counsel for the accused:

If the matter is stricken out, we have nothing to say, except to make the request that we be accorded courteous attention when we arise to interpose an objection.

Q. Did your beat run within 10 feet of the rear of the barracks?—A. No, sir.

Q. Within how many feet of the barracks did it run?—A. About 2 or 3 feet—right along up the side of the barracks.

Q. Was this time when you saw the scavenger, or heard his cart run away from the sink in the rear of B Company's quarters, the only time you saw him that night?—A. Yes, sir.

Q. Your beat was approximately how many hundred yards long, all the way around it?—A. I don't know, sir; I couldn't say exactly how many hundred yards it was.

Q. Can you give us an idea, whether it was 300 or 400 or 500 yards or not?—A. (Pausing.)——

Q. It took you approximately how long to walk around your beat that night—about how long? About five minutes, or ten minutes, or fifteen minutes, or how long?—A. If I was walking very fast, I could walk around in about six minutes.

Q. Walking at your usual gait, at the gait you probably were walking that evening, how long would it take you to go around?—A. I don't know, sir, how long it would take me to go around.

Q. Can't you give us an estimate—your best judgment?—A. (Pausing.)——

Q. Would it have taken you ten minutes?—A. About eight minutes, I guess.

Q. Was the night in question dark or light, or clear?—A. A dark night.

Q. How far could you see a person that night?—A. I could see a person, to recognize them, about 4 or 5 feet away from me.

Q. Well, how far away could you distinguish forms moving through the darkness—not to recognize individuals, but to just distinguish the fact that people were near by—how far or how close to you would they have to be in order to be seen?—A. About 40 feet, I guess.

Q. Now, with reference to the firing of your last shot, how soon afterwards was it that you resumed walking your post?—A. About two minutes, I guess; something like that.

Q. The fusillade was still going on, was it?—A. Yes, sir.

Q. And continued for how many minutes after that?—A. I don't know, but I had gone around my post and was in the rear end about the time that the shooting began to cease. I had gone around from the front side where I was at and was in the rear of the quarters.

Q. Now, from this position where were you when you fired those three shots to give the alarm, which way did you start walking your beat after you got back through that interval to the rear of the barracks and then started westward, keeping your barracks to the left—or did you start in any other direction in front of the barracks?—A. I went down in front of the barracks, not to the left.

Q. So you passed down in front of C Company and facing the barracks; is that correct?—A. Yes, sir.

Q. How far had you gone when the firing ceased?—A. Along about in the rear of the vacant set of barracks.

Q. So you had turned the eastern end of the line of barracks and had come back part way, about?—A. About the end of C Company's barracks, near that end of the barracks.

Q. This scavenger's cart, did it go off at a fast run, or only a slow gallop, or at a walk, or what?—A. It went off with a run.

Q. Did he have a lantern on his cart while he was going, or was there any lantern on it?—A. I don't remember whether he had a light or not.

Q. Did you ever see him at night before?—A. Yes, sir.

Q. Did he always have a lantern with him or not?—A. Yes, sir; he always carried a lantern. I had been on other posts, and I remember seeing him, he had a lantern with him.

Q. And do you remember now whether he had his lantern with him that night or not?—A. No, sir; I don't remember whether he did or not.

Q. In which direction did you fire your piece when you gave the alarm?—A. Over toward the officers' line; my piece was elevated.

Q. So that the bullet was to pass well above the officers' quarters?—A. Yes, sir.

Q. Now, toward which end of the officers' line did you fire it—toward the western or toward the eastern end—that is, toward the end near the river or away from the river?—A. The river is in the rear of the officers' line and I was facing the officers' line when I fired my piece.

Q. Did you fire your piece more in the general direction of the commanding officer's quarters, or in the general direction of Lieutenant Grier's quarters, or in the general direction of Captain Macklin's quarters, or what general direction?

Counsel for the accused:

We object to the question, because it is not shown that this witness knows where these officers lived.

Q. Do you know——

Counsel for the accused:

We object to the question.

Assistant judge-advocate:

We withdraw the question.

Counsel for the accused:

Now, may it please the court, when we make an objection we ask that we be allowed to have our objection ruled upon.

The president:

I thought I understood the assistant judge-advocate to say that he withdrew the question.

The assistant judge-advocate:

I so stated.

Q. Did you know on that night where Major Penrose, the commanding officer, lived?—A. Yes, sir.

Q. Did you know where Lieutenant Grier lived?—A. I knew about where he lived; I couldn't state exactly, but I knew about where his quarters were.

Q. Did you know where Captain Macklin lived?—A. Yes, sir.

Q. And you knew practically where Lieutenant Grier lived, did you?—A. Yes, sir.

Q. This scavenger's cart, did it go off at a fast run, or only a slow gallop, or at a walk, or what?—A. It went off with a run.

Q. Did he have a lantern on his cart while he was going, or was there any lantern on it?—A. I don't remember whether he had a light or not.

Q. Did you ever see him at night before?—A. Yes, sir.

Q. Did he always have a lantern with him or not?—A. Yes, sir; he always carried a lantern. I had been on other posts, and I remember seeing him, he had a lantern with him.

Q. And do you remember now whether he had his lantern with him that night or not?—A. No, sir; I don't remember whether he did or not.

Q. In which direction did you fire your piece when you gave the alarm?—A. Over toward the officers' line; my piece was elevated.

Q. So that the bullet was to pass well above the officers' quarters?—A. Yes, sir.

Q. Now, toward which end of the officers' line did you fire it—toward the western or toward the eastern end—that is, toward the end near the river or away from the river?—A. The river is in the rear of the officers' line and I was facing the officers' line when I fired my piece.

Q. Did you fire your piece more in the general direction of the commanding officer's quarters, or in the general direction of Lieutenant Grier's quarters, or in the general direction of Captain Macklin's quarters, or what general direction?

Counsel for the accused:

We object to the question, because it is not shown that this witness knows where these officers lived.

Q. Do you know——

Counsel for the accused:

We object to the question.

Assistant judge-advocate:

We withdraw the question.

Counsel for the accused:

Now, may it please the court, when we make an objection we ask that we be allowed to have our objection ruled upon.

The president:

I thought I understood the assistant judge-advocate to say that he withdrew the question.

The assistant judge-advocate:

I so stated.

Q. Did you know on that night where Major Penrose, the commanding officer, lived?—A. Yes, sir.

Q. Did you know where Lieutenant Grier lived?—A. I knew about where he lived; I couldn't state exactly, but I knew about where his quarters were.

Q. Did you know where Captain Macklin lived?—A. Yes, sir.

Q. And you knew practically where Lieutenant Grier lived, did you?—A. Yes, sir.

Q. This scavenger's cart, did it go off at a fast run, or only a slow gallop, or at a walk, or what?—A. It went off with a run.

Q. Did he have a lantern on his cart while he was going, or was there any lantern on it?—A. I don't remember whether he had a light or not.

Q. Did you ever see him at night before?—A. Yes, sir.

Q. Did he always have a lantern with him or not?—A. Yes, sir; he always carried a lantern. I had been on other posts, and I remember seeing him, he had a lantern with him.

Q. And do you remember now whether he had his lantern with him that night or not?—A. No, sir; I don't remember whether he did or not.

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Q. And you knew practically where Lieutenant Grier lived, did you?—A. Yes, sir.

Q. Were all of the men down?—A. I don't know whether all of the men were down or not. There were some men down—B and C Companies were down in front.

Q. There were some men down in front of these two companies, and you don't know about your company, because you were not close to it; is that correct?—A. Yes, sir.

Q. Now, with reference to this firing that was still going on after you had resumed walking your post and had gotten around toward the end of the vacant barracks—that is, nearest C Company—was this firing of a little different nature than the fusillading you heard down the alley?—A. Yes, sir; it seemed to be scattering shots.

Q. It seemed to be scattering shots—and there were some pistol shots and shotguns, did you think?—A. I don't know; they all seemed like the same guns.

Q. But there were not very many shots fired along toward the last part of the shooting; is that right or not?—A. There were a few scattering shots along toward the last part of the shooting; seemed to be further, 'way downtown.

Q. And it was at this time you were out behind the place you mentioned—that is, near the end of the vacant barracks—is that correct?—A. When I heard those scattered shots I was walking along the rear of the vacant set of barracks.

Q. So the main fire was how long before—that is, the heavy fire had ceased when you were where?—A. The fusillade?

Q. Yes; the fusillade or heaviest firing; the heavy firing, when was that, I say?—A. It was over about the time I started away from where I was at, in the interval between B and C Companies; of course the main heavy part of it was over about that time, but the firing continued to go on until I got in the rear of the vacant set of barracks.

Assistant judge-advocate:

We have no further questions.

REDIRECT EXAMINATION.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. Did you have any watch or any means of measuring time that night, Howard?—A. Watch?

Q. Yes; did you carry a watch?—A. No, sir.

Q. Your statements about the time are all mere estimates, then, are they?—A. Yes, sir.

Q. I think you said that Major Penrose was the first officer you saw to recognize, didn't you?—A. He was the first person I saw that night to recognize.

Counsel for the accused:

We have nothing further.

The president:

Any questions?

Assistant judge-advocate:

No, sir.

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Counsel for the accused:

We have nothing further.

The president:

Any questions?

Assistant judge-advocate:

No, sir.

from the 28th of July, 1906, until the 24th of August of the same year—not quite a month.

Q. Were you in Brownsville on the 13th of August of last year?—A. Yes, sir.

Q. Did you receive any unusual orders that day, any orders out of the ordinary, as company commander that day?—A. About half past 5 or 6 o'clock in the evening of August the 13th I received orders from the commanding officer, through his adjutant, to notify my company that all passes were suspended after 8 o'clock p. m., and to notify the men then in quarters and in the post, and to send out and find out all the men who were absent on passes in the town of Brownsville, and have them come at once back to the post.

Q. Was this order published with your company; if so, when and how?—A. It was published by the first sergeant at retreat roll call that evening.

Q. Did you understand by this order that the men of the company were to be held in after 8 o'clock—to be kept in?—A. I understood there was to be no authority granted them to leave the post after 8 p. m.

Q. What action did you take under this order?—A. I directed my first sergeant to publish this order at retreat roll call and send out and notify all the men he could find who were on pass in the town to come back to the post before 8 o'clock.

Q. Do you know if this order was obeyed?—A. The order was published, and efforts were made to find all men that were absent from the post.

Q. Was the check roll call held in your company, Captain Lyon?—A. Yes, sir.

Q. At what hour did you have it checked at Brownsville?—A. At 11 o'clock p. m.

Q. Were any absentees reported to you from that roll call that were not already checked?—A. I did not receive the report of the roll call; that was received by the officer of the day.

Q. Well, if absentees are reported, they are called to your attention when—as company commander, I mean?—A. The next morning.

Q. Were any absentees reported to you?—A. No, sir.

Q. You say it was the custom of the officer of the day at that place to receive these reports, this check there?—A. Yes, sir.

Q. The reports of the first sergeant, any report of the first sergeant, or the report of the noncommissioned officer?—A. In charge of the quarters.

Q. Did you understand why this order was given?—A. I think I did.

Q. Why was it?—A. I understood that it was given as a result of the Evans episode, in order to prevent any other of the men of the battalion from being maltreated by the citizens of Brownsville.

Q. Now, did anything unusual occur that night later on?—A. There was some shooting about midnight, or a few minutes after.

Q. State what you heard, Captain.—A. At about ten minutes after 12 I was awakened by the sound of 2 shots; those 2 shots were followed by 5 or 6 more in rapid succession, and after that came a number of shots, apparently an attempt at about two volleys; and then a lot of scattered firing.

Q. How was this done?—A. The first sergeant got a lantern and had his roll, and he and I together—that is, he called the names and I stood right alongside of him, and we went back and forth from point to point, so as to be sure every man who answered to his name was actually the man to whom the name belonged.

Q. What was the result of the roll call?—A. Two men were on pass. The rest of the company was present, or accounted for.

Q. You personally satisfied yourself on that point?—A. I did.

Q. Now, Captain Lyon, from the time you were aroused until you got to the company and got it formed, what duration of time do you calculate there was? I do not assume that you had a watch with you.—A. Three or four minutes from the time I woke up until the company was formed.

Q. Now, when did the firing cease, with reference to the formation of your company, as you recall it?—A. The last shots I heard were just about the time—either just before or just after—I reported to Major Penrose that my company was all ready.

Q. Were you in a position to see if any men joined your company from the time you made this report until you got them around by the wall?—A. Yes, sir.

Q. Did any men join your company during that time?—A. No, sir. That is, from the time the company was formed until they were deployed?

Q. Yes, sir.—A. No, sir.

Q. Now, let us take up this firing that you heard. Tell us just what you heard in the way of firing and what you took it to be.—A. The first two shots I heard were in my opinion revolver shots.

Q. And where did you locate them, if at all?—A. Somewhere northeast of my quarters; I lived in No. 3.

Q. (Referring to map.) That is your quarters there?—A. Those are my quarters there—northeast, or east of northeast.

Q. Will you go and point it out?—A. Yes, sir (indicating on map). The firing sounded off up here, up in that direction (indicating beyond the vacant set of barracks).

Q. Now, you do not pretend to locate any locality; you simply give directions?—A. That is all.

Q. What did you hear next?—A. Then I heard 5 or 6 shots in rapid succession that I also took to be revolver shots.

Q. What general direction were they, if you recollect?—A. They were simply—I could not at the time locate them at all—they were simply generally somewhere near north of the post, somewhere beyond the barracks.

Q. Now, what was the next firing you heard?—A. The next firing was these attempts at volleys, and indiscriminate firing, a lot of rifle firing, some kind of high-power rifle; and then later I heard many more revolver shots.

Q. Have you any distinct impression as to where this firing was, whether it remained in the same position?—A. Yes, sir.

Q. Tell the court your recollection as to that.—A. I could not at the time locate that firing, except that it was somewhere back of the barracks.

Q. And, as I understand you, you took it to be high-power guns?—A. Yes, sir.

I don't know exactly how far; then I turned to the left and came to the jail, where I stopped and made inquiries as to what the trouble was; if any arrests had been made. They said, "No." Then I went on with my company, and I met Mr. Joe Combe, the brother of the mayor. He said that his brother wanted to see me, and I went with him over to where his brother was—that was on Elizabeth street, I think—I am not very familiar with the streets there—and he told me that the soldiers had done the shooting and that they had killed a bartender and had wounded a policeman.

Q. Well, to go back to Dr. Joe Combe. Do you remember any conversation he had, aside from this?—A. Yes, sir.

Q. What was it?—A. He came down the street that runs at right angles to the street I was marching on, and just as my company reached the junction of those two streets at right angles to each other, I heard somebody cock a revolver, up a side street, and call "Halt!" to me, and I halted my company at once, and I went up to this man to see who it was, and it was this Dr. Joe Combe, and he said, "I thought your men were a bunch of Mexicans going to shoot up the post." Then he told me that about his brother.

Q. Then he told you that about his brother?—A. Yes, sir.

Q. Well, go on.—A. Well, I went with him to where his brother was, and he told me that the soldiers had done the shooting.

Q. You have narrated that. Then what happened?—A. He came in with me to the post; he and his brother.

Q. Captain, do you remember any incident about some of your men picking up a man?—A. Yes, sir.

Q. Tell the court what that was.—A. While I was holding my company, when I came to where Mayor Combe was, and he was talking to me at the head of the column, at the rear of the column or from the rear of the column some 3 or 4 men called me and said, "Captain, here is a man with a gun," and I went back there right away and 3 or 4 men at the rear of the column had seen this man with the gun and surrounded him, and Mayor Combe said, "That is one of my policemen." I said to the soldiers, "This man is a policeman. Fall in." They said, "Captain, he has a gun." I said, "Never mind about a gun, do as I tell you." And that was all.

Q. Was there any act of insubordination in connection with this in any way?—A. No, sir.

Q. Did you see any other men than Mayor Combe and the man with the gun?—A. There were a number of men; I can't say—20 or 30 men on the sidewalk—my company was in the middle of the street, and these men were in the shadow on the sidewalk.

Q. What was the condition of the streets, Captain Lyon, as you went through—I mean as to——A. They were muddy.

Q. And did you have a light of any kind with you on that patrol?—A. Yes, sir; I had my first sergeant march with me at the head of the column and carry a lantern, so as to keep out of the puddles.

Q. The streets generally were muddy?—A. Yes, sir.

Q. Captain, were the street lamps lighted that nigh
not positive; I think they were.

Q. Are you familiar with those street lights—what th
A. No, sir.

Q. Well, what was the result of your investigation of Tamayo?—A. Tamayo told me that he was working in the rear of B Company quarters; that he heard first one shot; and he said that he heard bullet from that firearm, whatever it was. He did not specify whether it was a revolver or a rifle; that it (the bullet) was traveling in the direction of the Rio Grande River, more or less parallel to the garrison wall. Then he heard a lot more shots, and he became frightened, and he drove his mule around in front of D Company's quarters; and he also stated to me that night that he had been some time in the rear of B Company, because after he got there with his cart he was thirsty and went to B Company kitchen to get some drinking water, and during the time he was there he was sure there were no men in the rear of the quarters or that left the quarters. He saw no soldiers at all, or anybody else, except the sentinel. The sentinel passed him while walking his post.

Q. Did you have any conversation with Major Penrose about this man's story? If so, what was it?—A. I suggested to the major that we have that man the first thing in the morning, and have him make affidavit to this statement he made to me.

Q. And did you get him as early as you could the following morning?—A. Yes, sir; I got him shortly after 6 o'clock.

Q. Do you remember if there was anyone present when you had this interview with Tamayo?—A. Major Penrose was.

Q. And where was this interview, as near as you can recall it?—A. This was in the rear of D Company. I think a little beyond D Company, rather.

Q. Did you receive any other instructions from Major Penrose that night? If so, what were they?—A. About 3 o'clock a. m. the commanding officer directed me to have my men go to quarters and go to bed, and to have the guns put in the racks, the racks locked, and the guns verified, and to make an inspection as early as possible in the morning of the guns, and to verify the ammunition.

Q. What kind of night was that, Captain Lyon?—A. It was a clear night. There was no moon at midnight; the stars were shining, but it was dark, a very dark night.

Q. Captain Lyon, did you carry out this order to verify the arms at that time and as directed; put them in racks as directed; see that they were put in racks?—A. Yes, sir. After the guns were in the racks I went through the squad room where the gun racks were and counted the guns and saw the racks were locked.

Q. Had you verified them before that?—A. After the roll was called the first time—no, the second time—I called the noncommissioned officer in charge of the quarters and asked him how many guns were in the racks, and he said—I forget the number—7 or 8, whatever the number may have been, but accounted for all the guns.

Q. At that time, then, you personally, by inspection, satisfied yourself that your guns were all as they should be—is that what I understand you to say; that the number of guns that should have been in the racks were in the racks; was that the idea?—A. Yes, sir; my inspection satisfied me that all my guns were accounted for properly.

Q. That was when you first went out to the wall, was it, and called the roll?—A. I think it was after the roll was called the second time, when I came back.

Q. And you were present during this interview?—A. Yes, sir.

Q. About how many citizens came there that morning? Do you remember?—A. I don't remember exactly; I should say, 13 or 14.

Q. What was the general tenor of the conversation that morning?—A. The general tenor of the conversation, as I recollect it—well, they felt a good deal of resentment toward the garrison.

Q. Yes? Anything else?—A. I do not recall anything else especially.

Q. Were you asked any questions about what you had done in the way of inspection of your arms and men and ammunition?—A. No, sir; I have no recollection of any such questions being asked me.

Q. Did you state to any member of that party that the only inspection that had been made of your men, arms, or ammunition had been made by the noncommissioned officers?—A. No, sir.

Q. You are sure about that?—A. Absolutely.

Q. Do you remember a Mr. Dennett at all?—A. No, sir; I do not know him at all.

Q. Were any questions asked you about the check roll call of your company?—A. I do not recall any such questions.

Judge-advocate:

By whom, may we ask?

Counsel for the accused:

By anyone in that party.

Q. Captain Lyon, after the arrival of the battalion on July 28, 1906, up to and including the 13th day of August, 1906, did you visit the city of Brownsville frequently, or not?—A. I should say that I went to Brownsville on an average of once a day.

Q. Do you recollect the date upon which the troops were paid at Brownsville?—A. August 11.

Q. Captain, did you ever hear any of the men in your command express an opinion, either favorable or unfavorable, about the separate bars that were provided for them there?—A. No, sir.

Q. Did you ever have a conversation with your first sergeant about it?—A. Yes, sir; I had not only one, but several.

Q. Was this before or after the occurrence there?—A. Before the shooting. I asked him how the men were getting along, and all that, and he told me about this separate bar business and said he didn't think there would be any trouble over it; that the men who did not like the separate bar could simply go somewhere else; that was all.

Q. Did you at any time previous to the occurrence itself have any suspicion that such an occurrence would take place?—A. No, sir.

Q. Was it or was it not a daily custom of the people of Brownsville—men, women, and children—to walk through the post, a daily occurrence, a little before or a little after sunset?—A. Yes, sir; it was.

Q. On the evening of the 13th of August did you or not observe any of the people of Brownsville walking through the post at sunset, or a little after that?—A. I did; found the usual number.

Q. Wasn't it a daily custom of the people of Brownsville—men, women, and children—to go into the post and witness retreat?—A. It was.

Q. Where did they usually congregate?—A. The majority would

Q. Did he say anything about satisfying himself as to why it had been done?—A. Well, he may have; I do not remember it now.

Q. You stated that you thought it was the post being shot into. Were you still of that opinion at the time you made your inspection the following morning at 6 o'clock or 6.30?—A. Yes, sir.

Q. Captain, during your service there, up to the time of this event, was anything brought to your attention that would indicate a feeling of animus or resentment on the part of the enlisted men of your command toward the people of Brownsville?—A. Nothing.

Q. Had anything been brought to your attention that would indicate on the part of the people of Brownsville an animus toward the people of the post—toward the soldiers of your command, other than the ordinary race prejudice?—A. No, sir.

Counsel for the accused:

You may take the witness.

CROSS-EXAMINATION.

QUESTIONS BY THE ASSISTANT JUDGE-ADVOCATE.

Q. Captain Lyon, how is it that you arrived at the conclusion that the first shot was fired about 12.10?—A. I went upstairs about ten minutes of 12 and went to bed, and had just fallen asleep, just dozed off, when this first shooting commenced. So I did not fix it; I approximated it at 12.10.

Q. So you had seen a clock at the time you figured that was only about twenty minutes prior to the time of the shooting, then?—A. Yes; I always look at a clock when I go to bed.

Q. Did these shots that came after the first two—and, in fact, after the first 5 or 6—these shots that sounded like an attempt at a couple of volleys and then a scattering fire—did these shots that sounded like an attempt at volleys sound as if fired from high-power rifles?—A. Yes, sir.

Q. And this scattered firing that followed, that also sounded like high-power rifles?—A. A great deal of it.

Q. There were occasional shots that did not sound that way; is that the idea?—A. Yes, sir.

Q. Was there any noticeable difference in the sound of these shots from the reports of the Springfield rifle as you have heard it on the range?—A. No. That is the reason that I stated that they were, in my opinion, fired from a high-power rifle, because they were the same—had the same reports.

Q. How long do you think it was, Captain Lyon, before you dressed and out of your house?—A. About forty seconds.

Q. You are married, are you not, Captain Lyon?—A. Yes.

Q. Was Mrs. Lyon there at home?—A. Yes.

Q. Did you take her to another house, or did she stay there in your house?—A. She stayed there and the other woman came to my house.

Q. And you left before Lieutenant Grier and Mrs. Grier arrived?—A. Yes. Mrs. Lyon was still upstairs; she had not come down at all. There was nobody there when I left.

only one or two men outside when you reached the company, is that right?—A. You mean——

Q. There were only one or two men outside?—A. That referred to the company parade ground?

Q. Yes, sir; there were only one or two men outside after you got to the company parade ground?—A. Yes.

Q. The other men were downstairs or just getting up?—A. Some were just getting dressed, others were coming downstairs; two or three were on the porch; they were in the act of forming.

Q. Who gave the command for the armracks to be unlocked in your company, do you know?

Counsel for the accused:

We object to that. Nothing has been said about unlocking the armracks. We object to that question. If you want to ask if he gave any order about it, we won't object to it, but he assumes, may it please the court, that an order has been given, which is certainly not a proper cross-examination. Now, if he will stick to the facts we will not interpose any objection at all; but he must not make assumptions that have not been brought out by the direct examination.

The president:

Please read the question.

(The reporter read the question.)

Counsel for the accused:

May it please the court, there has not been a word said about it by this witness, and it is the form of the inquiry we object to. It assumes something that is not true. He has a perfect right, of course, to ask if such an order had been given, but he assumes in his question that such an order had been given, which is not true.

Q. Did you at any time soon after your arrival at the company give an order for the armracks to be opened?—A. I did not.

Q. Do you, or not, of your personal knowledge know by whose order they were unlocked?—A. Indirectly by order of the commanding officer when he ordered the call to arms to be sounded; no order is necessary when the call to arms is sounded; the gun racks must be unlocked.

Q. There were no gun racks in your company that had been broken open?—A. None.

Q. Were those two men on the parade ground and the other men on the porch and on the stairs, outside of the barracks, were they under arms or not?—A. There were no men on the parade ground. The company parade, simply an asphalt walk in front of the porch.

Q. That is what I said.—A. I said 2 men. There might have been 4.

Q. Were those men armed?—A. They were armed with rifles.

Q. And all the other men that came down brought their guns with them so far as you saw?—A. I did not see them.

Q. Were all the men assumed to have 10 rounds, or do you know?

Counsel for the accused:

We object to that. This gentleman assumes something that has not been stated. He is assuming a thing as true when it is not true.

Judge-advocate:

Unless my memory deceives me very badly, I am very positive this man did state that some of the men had 20 rounds of ammunition and divided with the

could have joined his company as deployed along the wall and without his seeing them; he said they might have come in on the left flank while he was back there near the gate, and I want to ask him if he was there all the time or only part of the time.

Counsel for the accused:

We have no objection to his asking where he was; that is perfectly proper, but we object to his asking it in the form, "You were there."

(The reporter read the question.)

Assistant judge-advocate:

I will change that.

Q. During the time that your company was deployed along the stone wall to the west of the garrison gate, where did you yourself stay most of the time?—A. In the rear of the center.

Q. Do you know whether your company was the first one to reach the wall or not?—A. I do not know; I do not remember.

Q. Did you see B Company at its position along the wall?—A. No; I did not. The left of B Company was extended slightly and joined onto my company, but whether that was during the process of formation or as a correction of the first formation I do not know.

Q. Do you know when you first marched your company away from the front of D Company barracks whether or not B Company was still in front of its own barracks, or whether it had moved away?—A. No; I do not recall.

Q. Was there any light near the garrison wall, between the garrison gate and the river?—A. I do not recall any light there at all.

Q. When you were on your patrol, Captain, uptown, were you assured by any other than by the mayor and his brother that the soldiers had done the shooting; did anyone else speak to you on that subject?—A. I had no conversation with anyone except the two Combes, Doctor Combe and the mayor.

Q. Did you hear all the conversation that took place between Mayor Combe and Major Penrose?—A. I do not know.

Q. How long was Mayor Combe there altogether, approximately?—A. I do not know exactly; to the best of my recollection, from twenty minutes to half an hour; but that may be entirely wrong.

Counsel for the accused:

He says from twenty minutes to half an hour, to the best of his recollection.

Q. In the course of Major Penrose's and Mayor Combe's conversation relative to the shooting did you hear Mayor Combe state that some of the most reputable citizens of Brownsville had seen the attacking party and recognized them as soldiers, or words to that effect? I do not pretend to give his exact words.—A. No; I do not. I only recollect his statement as a fact that the soldiers had done the shooting.

Q. Did Major Penrose at this time—that is, after receiving Mayor Combe's report and after stating that he did not believe that the men could have done it—did he state to you, or in your presence to anyone, his grounds for such disbelief?—A. He made no statement to me that I recall, other than to express a disbelief in the report of Mayor Combe. I do not know what statement he made to other persons.

Q. I think you said on your direct examination that Private Howard, who was the sentinel on No. 2 post that night, made a statement before you the next day and an affidavit that he signed on August 20. As a matter of fact, did he not make two?

Counsel for the accused:

I do not believe that the witness, as a matter of fact, stated when he signed it at all.

The president:

No; he said several days after that.

Q. As a matter of fact, did he not make two affidavits—two separate and distinct ones?—A. Yes; he made this first one that was made in the adjutant's office, and the second one was made in the regular order. I took the affidavits of every man in my company.

Q. And they were both sworn to on the same day, several days after the shooting?—A. I am not positive; I think so.

Q. When you spoke to Tamayo, the scavenger, with reference to the shooting, did he tell you or not that he was badly frightened?—A. Yes; to the best of my recollection he told me that he was frightened by this shooting.

Q. And did he say that he galloped his mule or walked his mule or trotted his mule over towards D Company barracks?—A. I do not recall that he specified how he moved his mule off.

Q. In your company, Captain Lyon, the noncommissioned officer in charge of quarters habitually keeps the keys of the gun racks, does he not?—A. He does.

Q. And that is customary, so far as your knowledge goes, throughout the battalion?—A. So far as I know throughout the service.

Q. Now, after the shooting on this night, after you were directed by the commanding officer to dismiss your company, did you receive any orders directing you to keep the keys of the gun racks in your personal possession during the rest of the night?—A. I do not recall that I received any such orders.

Q. Did you do so, or did the keys remain in the hands of the noncommissioned officer in charge of the quarters?—A. The keys, to the best of my recollection, remained in the hands of the noncommissioned officer in charge of quarters.

Q. And that was whom?—A. That was Corporal Powell.

Q. Do you know whether the first sergeant of your company or the acting first sergeant slept in the company barracks that night or not between the time when you dismissed the company and reveille?—A. I think he did; I am not positive.

Q. And he was a married man, wasn't he?—A. Yes.

Q. And habitually slept in a house several hundred yards away from the barracks?—A. Yes.

Q. You, yourself, did not give him any specific orders to sleep there in the barracks that night, did you?—A. I do not remember.

Q. So you can not state of your own knowledge whether he slept there?—A. I can not.

Q. The quartermaster-sergeant habitually slept downstairs in a room by himself, did he not?—A. Yes.

Q. And did the company clerk also have a room downstairs?—A.

Q. Did you have the key to this room where the arm chest was?—A. No.

Q. That was in the hands of your quartermaster-sergeant, was it?—A. Yes.

Q. And the quartermaster-sergeant was out on the lawn, was he?—A. Yes.

Q. Now, what time was it you left your company in the morning—that is, the time you dismissed your company by Major Penrose's order?—A. Shortly after 3 o'clock.

Q. If you were satisfied, or in any manner could be satisfied to-day that the seals on that arm chest of which we have been speaking were broken at the time you opened the chest, would you think that was a suspicious circumstance?—A. I would not.

Q. In your company are not all sealed army chests and all property received that is considered sufficiently valuable to be nailed up and sealed, isn't that all checked in the presence of an officer before the seals are broken?—A. No; only when property is first received from an issuing officer, then it must be verified by an officer. These guns were packed at Fort Niobrara by the quartermaster-sergeant and stamped simply with the company seal.

Q. So from about 3 o'clock in the morning to somewhere about reveille the next morning there was no officer on duty with D Company—actually with the company?

Counsel for the accused:

We would like to know what is meant by that question?

Assistant judge-advocate:

I will change the form of that question, may it please the court.

Q. So that from about 3 o'clock in the morning of August 14 until about daylight, or about reveille, there was no officer immediately present with the company at the barracks?—A. So far as I know, there was not.

Q. On the morning of the 14th of August, when you were making your inspection, did all of the company stand in line after you fell out certain men for further inspection of their rifles, or were they dismissed and made to go up to the squad room to prepare for inspection of ammunition?—A. I am not positive about that; I do not remember.

Q. Do you remember the names of those men whose arms you gave this further inspection, or about whose arms you gave this further inspection?—A. Only one—I remember the name of one man, who was the cook, the company cook, first cook.

Q. What was his name?—A. His name was Dade.

Q. How many were there altogether whose arms you thus reinspected?—A. Four or five as I recollect.

Q. Now, on the morning of the 14th of August, when the Citizens' Committee officially called upon the commanding officer, is or is it not a fact that during this call or visit different members of the committee would approach different officers in the room and engage them in conversation relative to the firing of the night preceding?—A. There were a number of them spoke to me. The conversation was practically general after the first few speeches had been made.

Q. So that, after the first few speeches, you can not state very

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., March 19, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocates. The accused, his counsels, and the reporter were also present.

The reading of the proceedings of March 18 was dispensed with.

Capt. S. P. LYON, Twenty-fifth Infantry, witness for the defense, was reminded that he was still under oath.

CROSS-EXAMINATION CONTINUED.

QUESTIONS BY ASSISTANT JUDGE-ADVOCATE.

Q. Captain Lyon, how do you know that the first sergeant published the order to the company, as directed by the commanding officer and yourself, at retreat on the evening of August 13?—A. Simply from his official report to me.

Q. And the same applies to the check roll call, does it, held that night?—A. I received no report of any check roll call.

Q. You stated on cross-examination yesterday that you did not know whether the first sergeant slept in the company barracks that night or not; but I wish to ask you whether from August 14 on, beginning the night of August 14, did he not sleep in the company barracks by your order?—A. I said I could not be positive whether I directed the first sergeant to sleep in the orderly room after the firing of August 13; my impression is he had permission to go to his own quarters for a time and then return; but as I said, I can not be sure. I do know that from that time on he was required to sleep in the orderly room, or in his own room adjoining the orderly room, from that time on.

Q. Until the battalion left Brownsville?—A. Yes.

Q. Was there any good reason you can now recall why he should not have been kept in company barracks the rest of the night of the 13th?—A. Yes; he was a married man and his wife occupied the quarters assigned to him, about four or five hundred yards from the company, and he naturally wanted to see her and reassure her after the firing.

Q. But you can not state that you gave him positive orders to return to the company after going home and assuring himself of his wife's safety?—A. I can't state so, positively.

Q. When you called the roll—when you first called the roll after the company was deployed in line of skirmishers along the stone wall—why was it you took such particular pains to be sure that every man that answered to his name was actually the man to whom the name belonged? Did you think that in case any soldier had been killed or injured while in town, so as to be unable to be present, that any comrade of his would answer to his name?

By counsel:

We object to that question; entirely improper. He may ask the witness why he did so, but to put words in the witness's mouth, we object; it is clearly improper. We are willing he should ask why he did that, but to suggest an answer, we object.

There was nothing unusual in my method of calling the roll of a company deployed in line of skirmishers at night when you can not see any men except those near you. I simply wanted to make an accurate roll call and there was no other way to do it.

Q. You were then of the opinion that the post had been shot up from the town?—A. I was.

Q. And were you afraid that some of your men had been killed or injured in the town?—A. I didn't know whether they had or not.

Q. Was this roll call made more with an idea of finding out merely whether, approximately, the entire company was present, or with a particular thought in mind of trying to find out if any particular member of the company was missing and whose whereabouts could not be ascertained?

By counsel:

The question has been answered and we object to it in its present form, that is, the important part of it; he has already stated why he called the roll in that way. We object to it and, may it please the court, we object on the same ground as we did to the other question to which the court's attention was called, and in which our objection was sustained.

(Question read from record.)

By assistant judge-advocate:

May it please the court, this roll was called at a time when doubtless a good many members of the garrison thought that the post was being shot up from the town, and it seems to me that in case of such excitement that accurate roll calls were not ordinarily made unless there was some idea that some man was absent who should not have been absent——

By counsel:

Now, may it please the court, may I interrupt for a moment. I object to an argument at this stage of the proceeding, because he has already said enough to sustain the contention of the defense, to wit: That he is injecting into his question an answer that is bound to sustain his theory that he purposes to argue to this court in regard to this matter. It isn't bringing out a fact; it is suggesting a theory that the defense proposes to argue to the court, and clearly that is not admissible in any kind of examination and especially in cross-examination, and particularly so at this stage, because the court has already sustained one objection to a similar question and because this has been answered directly and in terms. Witness has stated positively why he called the roll in that way, and he is trying to support by indirection a theory, and we object to further argument along the line of that theory.

By assistant judge-advocate:

Do I understand counsel to state a question such as this is particularly inadmissible on cross-examination?

By counsel:

Yes; I maintain that question is inadmissible, or any question is inadmissible that suggests, or goes to support, a theory of defense. He can bring out any facts——

By assistant judge-advocate:

I maintain that question is clearly proper, may it please the court.

By judge-advocate:

I would like to state, before court is cleared, that this witness has said upon the stand that he believed at that time the post had been fired upon by the town; he also described with great particularity the accurate roll call made at that time. We want to have these two things brought together and explained—why, if he thought the town had fired on the post—why he thought any man

Q. And during this time the men were deployed along the wall, with the right resting near the garrison gate and the left extending down toward the Rio Grande; is that correct?—A. That's correct.

Q. Are you absolutely certain that no men joined the company after the main firing was over and before this roll call was completed?—A. I am positive, in my own mind, that no men joined.

Q. But are you willing to state here to the court that it was an absolute impossibility for men to have joined during the period named?—A. I am not.

Q. Without your having seen them?—A. I am not.

Q. Immediately after the company was formed and you had reported it to Major Penrose, and had been directed by him to move it over and take up position along the wall, you marched the company over there. Where did you march, on the flank or at the head of the company?—A. I can't say positively.

Q. But you did not march in rear of the company, did you?—A. It would be unusual for me to take that position, and I recall nothing that would necessitate my placing myself at the rear of the column.

Q. So, the best of your present belief, you did not march at the rear of the column?—A. I marched where I could best control the actions of the men, wherever that might have been.

Q. But from such position are you absolutely certain you could have seen any men who might have come in from town, gone through the barracks, and come down and fallen in in rear of the company?—A. Do you mean while the company was marching to its position in rear of the wall?

Q. Yes.—A. While the company was in front of the barracks and while they were moving around the east end of the barracks it might have been possible for a man to enter the rear of the quarters and for me not to see him, but after that it would not have been possible.

Q. I mean for a man not only to have entered the rear of the quarters, but also to have fallen in in rear of the column without your seeing him?—A. While the company was marching to its position?

Q. While the company was marching.—A. I think it would have been possible.

Q. You stated that among your orders from the commanding officer at the time he sent out your company for a patrol were orders to gain any information you could as to what this difficulty was about and who had done it—who had done the shooting. Now, at this time was there any doubt in your own mind that the shooting had been done entirely by persons other than soldiers?

By counsel:

I would like to have the evidence read on which this question is based.

(Assistant judge-advocate then read from record as follows: "A. My orders were to patrol this part of the town of Brownsville and to see if any of these men, persons who were on pass, had been hurt out there and to gain any information I could as to what this difficulty was about and who had done it—who had done the shooting.")

By counsel:

We wanted the whole thing. We have no objection to the question.

By counsel:

I wish to call the attention of the court to the fact that he is arguing in support of the theory he purposes to bring before this court as to facts. If there is anything this judge-advocate wants to bring out from this witness he can do it by proper questions. We object to the form of question; it is objectionable on the same grounds as the others; it is going to sustain a theory of the defense. That information can be brought out by proper questioning; that is not a proper question at all. We don't want to object to any proper questions.

By president of court:

To save time, will you change the wording of the question?

Q. Captain Lyon, if you knew that Dr. Joseph Combe had stated that when he met you the time in question he told you he thought your company was a body of Mexicans or citizens and that he did not say they were raiders, nor did any such thought enter his mind, but that he did think they were citizens coming to join the indignation meeting on Elizabeth street which had just been broken up by the mayor, would you still be of the same opinion as you are at present with reference to that conversation?

By counsel:

We object to that question. It is trying to inject Dr. Joseph Combe into this case without bringing him before the court. It is an argument, it is argumentary, and it is objectionable on so many grounds that we won't take up the time of the court to state them further than to state it is objectionable on the grounds we have just stated. This witness, we take it, is subject to the call of the judge-advocate at any time—he was placed on his list of witnesses originally.

By judge-advocate:

I can not see why counsel makes such a point of the fact that this witness has once been called by the prosecution, or the fact that his name once appeared on the set of charges.

By counsel:

We don't purpose to have judge-advocate on cross-examination interject new evidence or interject new people in this thing when he declines to place them on the stand and give us a chance to cross-examine.

By judge-advocate:

If counsel will leaf back over the record he will notice the name of Dr. Joseph Combe in a number of places in direct examination. This meeting has been testified to, and we have a perfect right to cross-examine him on things that took place at that time.

By counsel:

By proper questioning.

By judge-advocate:

And we maintain that the question is proper.

By counsel:

Now, may it please the court, he starts out with an hypothesis that is not correct. The only grounds upon which such a question would possibly be admissible is to contradict what this witness has said, and he has not started to lay the ground for that in the proper way at all. It is admissible to bring that witness up here, if he sees fit, to contradict anything this witness may say as to evidence, but it is improper and highly prejudicial to the rights of the defense to have the supposed statement of a man who was not called, never been in the case except by name, and any hypothetical statement he may have made is entirely improper and prejudicial to the defense, and we object; we don't object to *any proper* question as to what that conversation was.

Q. Not even of your own barracks?—A. No.

Q. Did you ever hear of anyone finding any bullet holes in any of the buildings down there that apparently were the result of the shooting of the night of August 13?—A. I never did.

Q. Such investigation was made, however, was it not?—A. I don't know.

Q. You have no personal knowledge, either official or unofficial, whether the commanding officer made such inspection?—A. Of my own knowledge, I know nothing about it; I understand that such an inspection was made.

Q. In order to correct a mistake in the record, as I believe it to be, on page 2291 [1082]: "Q. But it was more mixed firing toward the latter end of the shooting than it was at the height of the shooting; is that not so—there were more rifle shots?—A. Yes; I think that is correct." My recollection of that question is that I said: "There were more revolver shots," and I wish to ask you now which was the case?—A. That's my recollection; I think it is incorrectly recorded.

Q. Your recollection is there were more revolver shots toward the end of the shooting. Is that not correct?—A. That's right.

Q. Did you inspect at daylight on the 14th, or at any subsequent time, the vicinity of the wall where the men had been stationed during the night of August 13, to see whether you could find any soiled rags or other evidences of attempts at cleaning guns having been made?—A. I did not.

Q. Did you ever examine the garrison road, or the vicinity of the garrison road, or the Cowen alley for evidences of cartridges?—A. No.

Q. Were you present on the morning of August 14 when Mayor Combe handed or exhibited to Major Penrose certain shells, clips, and empty cartridge cases that he said had been found or picked up early that morning?

By counsel:

We won't enter a formal objection to this, but it wasn't touched on in direct examination.

Q. Were you present?—A. I was present when Mayor Combe, with the other members of the committee, called on the commanding officer. I was seated close to the commanding officer's desk, right next to it, in fact, but I saw Mayor Combe produce no shells, clips, or anything of that character.

Q. Are you positive that he did not?—A. I did not see him.

Q. You were not present at any time prior to the occasion when the Citizens' Committee called? The time to which I refer was the morning of the 14th, prior to the visit of the Citizens' Committee, and the place, the commanding officer's office.—A. I wont be positive, but I think I went over to the adjutant's office after the inspection of the arms and ammunition of my company, and after taking the affidavit of this man Tamayo.

Q. Did Mayor Combe come in while you were there at that time?—A. I didn't see him.

Q. Would it have been possible, at 3 o'clock on the morning of August 14, or at the time when you were directed to dismiss your company, to have gathered together the gun racks, put them in a room

REDIRECT EXAMINATION.

QUESTIONS BY THE ACCUSED.

Q. Captain Lyon, you say your company formed that night in front of the barracks—that is, using the word front as relating toward the parade ground. Did they face toward the officers' quarters?—A. The company was formed in double rank, facing outward from the barracks—that is, facing the officers' quarters.

Q. And the right of your company was toward the river or toward the western end of the barracks?—A. It was.

Q. Formed in the usual way, was it—usual method of forming?—A. It was.

Q. And when you moved out to take your position, how did you move?—A. I moved by the left flank, in column of squads.

Q. The command would have been "Squads left," then?—A. Yes.

Q. So that that part of your company that was on the right was a complete formation, as far as you know—that is, the squads to the right would naturally be complete, full squads?

By assistant judge-advocate:

I object to that as a leading question. I am objecting to the form of the question.

By counsel:

Read the question, and we will change it, if we can.

(Question read as recorded.)

By counsel:

We won't interpose any answer to the objection.

By assistant judge-advocate:

May it please the court, the defense has frequently objected to leading questions on the part of the prosecution during cross-examination of a witness introduced by the defense, and in order to be consistent it seems to me that the defense in the direct or redirect examination of its own witness should endeavor to avoid, so far as may be within its power, asking leading questions. We will have to object to this question, even though it necessitates calling for a ruling of the court, inasmuch as defense will not change its form.

By counsel:

We don't think it is a leading question; therefore we are perfectly willing for a ruling of the court on it.

The accused, his counsels, the witness, the reporter, and the judge-advocates then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce that the objection is sustained.

(At request of counsel question was again read as recorded.)

Q. Was or was not your formation made in the usual way that night?—A. It was.

Q. Captain Lyon, what was the condition of your barracks when you took possession of it on July 28?—A. They were not clean.

Q. What, particularly, did you notice that would warrant your making that statement?—A. There were a number of articles of old clothing lying about; old rags and a number of cartridge shells.

Q. Would or would you not have seen them in this time if they had been there?

By assistant judge-advocate:

I still object to that question.

By counsel:

We will ask for a ruling of the court.

By assistant judge-advocate:

It has not been shown in evidence that the walls of this storeroom were absolutely bare; that there was any place where bandoliers could have been hung; that there were any of these articles of clothing hanging up where bandoliers might have been concealed below them. There has been no foundation laid for any such expression of opinion.

By counsel:

We will go ahead and lay a foundation, then, may it please the court.

By assistant judge-advocate:

Even after foundation is laid, it still remains a question of opinion, and, to the mind of the prosecution, is still objectionable.

Q. Tell the court just what you did in checking over this property.—A. I had a man of my company count in my presence the various articles in the storeroom.

Q. What were they?—A. There were mattresses, sheets, pillowcases, and a few other articles of that description; some mosquito bars, cuspidors.

Q. Were all these things moved so you could see all the property that was in the storeroom?—A. Every article was moved from its first position in order to be accurately counted.

Q. Mattresses were taken out at that time or not?—A. The mattresses were taken out as the men needed them for that night.

Q. And these other various articles, were they taken out and issued at that time or not?—A. They were not issued at that time.

Q. But you made an official check up of all the property that was in there at that time?—A. I saw everything that was in there.

Q. Then, I ask, would or would you not have seen such a thing as two or more bandoliers of new ammunition hanging on the wall at that time?

By assistant judge-advocate:

May it please the court, I object. The witness has stated he saw everything that was in the room. He has also stated he did not see any bandoliers.

By counsel:

We will ask for a ruling of the court on it now, may it please the court.

The accused, his counsels, the witness, the reporter, and the judge-advocates then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce that the objection is not sustained.

A. I am certain in my own mind that had they been there I would have seen them.

By counsel:

It does not relate to the redirect examination, but we interpose no objection.

By assistant judge-advocate:

May it please the court, it is absolutely pertinent to the redirect examination.

By president of court:

There has been no objection interposed. Please go on.

Q. At what distance could you recognize a man whom you knew by sight and by name, that night, in front of D Company barracks?—A. And at the place the company was being formed?

Q. Yes.—A. I should say, perhaps, 4 or 5 feet.

Q. So that when you stated that every man was in his own place in ranks you do not mean that of your personal knowledge you saw that every man was in his proper place?

By counsel:

I object to that. There has been no such testimony to support the question; it is not based on any evidence.

Q. When you stated that the formation of the company at that time was made in the usual way, do you mean that of your own personal knowledge every man was in just the place where he belonged?—A. When I said the company was formed in the usual way, I meant simply that the company was formed in double rank and with the right and left guides—the usual formation of a company.

Q. But you do not know of your own knowledge whether every man present was in the place that he ordinarily occupied when the company was formed for drill or not?—A. I don't know, but I think it highly improbable he was not. They fell in on the left as they came down.

Q. So they didn't fall in by squads, merely fell in on the left of the line as they came down?—A. Fell in on the left and closed in on the right.

Q. So the first squad in its entirety was not on the right of the line, then the second squad next to it, and so on?—A. The men as they came out of the quarters fell in on the left of the company and closed in toward the right.

Q. I wish to ask Captain Lyon whether he cares in any particular to modify his statement with reference to the conversation occurring between him and Dr. Joseph Combe early on the morning of August 14, when he first met the said Dr. Joseph Combe in the streets of Brownsville.—A. I have no correction to make.

EXAMINATION BY THE COURT.

Q. Was it customary in taking roll call at Fort Brown to verify each man when his name was called, as was done after the shooting that night in your company?

By counsel:

We will have to object to that question. If the gentleman formulating it will ask the custom of this witness as to his particular company, we will not object.

By a member of the court:

Mr. President, I asked that question and I would like to have information on that point. The information I would like to get is this: I know it is cus-

come over to me, as summary court officer, the first thing in the morning, and get this testimony of his. I offered the commanding officer no advice upon any other subject.

Q. Was that the only step, other than those ordered by the commanding officer to be taken, that occurred to you during the night as advisable or necessary to be taken in the interest of all concerned—that is, steps to be taken that night until daylight?—A. Except that in the strengthening of the guard for the protection of the post there was nothing else that struck me that night that I recollect now.

Q. The witness has testified that the commanding officer took certain precautions, or ordered certain precautions to be taken, by issuing certain orders in regard to the guard during the night, in regard to the inspection of guns in the morning, and the verification of ammunition, sending of patrols about the post. Did the witness consider any other steps should be taken at that time in the interest of all concerned?—A. I did not.

Q. While you were inspecting your guns in the early morning of August 14 did you notice a carriage pass along the road in front of your barracks? If so, state, if you can, who were in that carriage.—A. I can not be absolutely certain, but to the best of my recollection, while I was either inspecting the rifles of my company or a few of the rifles of B Company, Doctor Combe and his brother drove in through the gate and came around that road on the way to the hospital.

Q. Did the affidavit of Tamayo bear out his statements to you made that night, and did his manner and tone that night impress you at all that he was telling the truth?—A. The affidavit taken before me the next morning was the same in substance as what he had told me just after the shooting or when I spoke to him about it. His manner during the night, when I talked to him, was to me—it was apparent that he was frightened, and that he was sincere in what he was saying.

RECROSS-EXAMINATION.

QUESTIONS BY THE ASSISTANT JUDGE-ADVOCATE.

Q. Was there anything that came to your notice that night—that is, was brought to your notice by other people, other than Tamayo's and Private Howard's statement—that made you believe that the soldiers had not taken part in the shooting?—A. The quartermaster-sergeant of my company, when I first went to the company from my quarters, told me that the shooting was from the town into the post; that the first shots came from in rear of B Company—the first shots he heard—from a green house; I don't know who lives there. That was one of the things that induced me to believe the people of the town were shooting into the post.

Q. By the green house do you mean the house shown on the map at the corner of Elizabeth street and the garrison road, or the one at the corner of the alley and the garrison road?—A. I don't remember whether on the corner or not, but it was nearer the alley; not the one on Elizabeth street.

Q. Was this sergeant's name McCurdy?—A. No.

Q. What was his name?—A. Thomas J. Green.

come over to me, as summary court officer, the first thing in the morning, and get this testimony of his. I offered the commanding officer no advice upon any other subject.

Q. Was that the only step, other than those ordered by the commanding officer to be taken, that occurred to you during the night as advisable or necessary to be taken in the interest of all concerned—that is, steps to be taken that night until daylight?—A. Except that in the strengthening of the guard for the protection of the post there was nothing else that struck me that night that I recollect now.

Q. The witness has testified that the commanding officer took certain precautions, or ordered certain precautions to be taken, by issuing certain orders in regard to the guard during the night, in regard to the inspection of guns in the morning, and the verification of ammunition, sending of patrols about the post. Did the witness consider any other steps should be taken at that time in the interest of all concerned?—A. I did not.

Q. While you were inspecting your guns in the early morning of August 14 did you notice a carriage pass along the road in front of your barracks? If so, state, if you can, who were in that carriage.—A. I can not be absolutely certain, but to the best of my recollection, while I was either inspecting the rifles of my company or a few of the rifles of B Company, Doctor Combe and his brother drove in through the gate and came around that road on the way to the hospital.

Q. Did the affidavit of Tamayo bear out his statements to you made that night, and did his manner and tone that night impress you at all that he was telling the truth?—A. The affidavit taken before me the next morning was the same in substance as what he had told me just after the shooting or when I spoke to him about it. His manner during the night, when I talked to him, was to me—it was apparent that he was frightened, and that he was sincere in what he was saying.

RECROSS-EXAMINATION.

QUESTIONS BY THE ASSISTANT JUDGE-ADVOCATE.

Q. Was there anything that came to your notice that night—that is, was brought to your notice by other people, other than Tamayo's and Private Howard's statement—that made you believe that the soldiers had not taken part in the shooting?—A. The quartermaster-sergeant of my company, when I first went to the company from my quarters, told me that the shooting was from the town into the post; that the first shots came from in rear of B Company—the first shots he heard—from a green house; I don't know who lives there. That was one of the things that induced me to believe the people of the town were shooting into the post.

Q. By the green house do you mean the house shown on the map at the corner of Elizabeth street and the garrison road, or the one at the corner of the alley and the garrison road?—A. I don't remember whether on the corner or not, but it was nearer the alley; not the one on Elizabeth street.

Q. Was this sergeant's name McCurdy?—A. No.

Q. What was his name?—A. Thomas J. Green.

correct?—A. No; he didn't tell me all that. I don't remember as he gave me his complete route. As I recall it, he simply told me he ran around—went around with his mule and cart—between D and B Company barracks, over in that general direction; in front of D Company barracks and the administration building.

Q. When was it you saw Howard and investigated his story? Was that before or after you made this patrol?—A. That was after I made the patrol, while my company had fallen out and were resting on the grass near the east end of my quarters.

Q. This was after you had talked with Tamayo, was it not?—A. I don't recall whether before or after.

Q. There was nothing happened that you can fix that definitely in your mind?—A. No; I can only fix my conversation with Howard and where it was.

Q. Was that conversation with Howard before or after Major Penrose's conversation with Mayor Combe, or was it during it?—A. It was after Mayor Combe had come into the garrison with me. I don't know whether he and Major Penrose were still conversing or not.

REDIRECT EXAMINATION.

QUESTIONS BY THE ACCUSED.

Q. You were the second in command at that time, were you not, Captain Lyon?—A. I was.

Q. As I understand the purport of your answer to the court, aside from the importance of having the evidence of Tamayo before he could be prejudiced by other parties, you considered the steps taken by Major Penrose as commanding officer all that were necessary and proper under the conditions?—A. I did.

The court then took a recess until 2 o'clock p. m., at which time the members of the court, the judge-advocates, the accused, his counsel, and the reporter resumed their seats.

Lieut. HARRY G. LECKIE, a witness for the defense, upon being duly sworn, testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please give your name, your rank, and your present station.—A. Harry G. Leckie; second lieutenant, Twenty-sixth Infantry; Fort Sam Houston, Tex.

Q. Do you know the accused? If so, please state who he is.—A. I do, sir. Major Penrose, Twenty-fifth United States Infantry.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. Were you ever stationed in Brownsville, Mr. Leckie?—A. Yes, sir.

Q. Tell the court when.—A. From the 6th day of September, 1903, until June 2, 1906.

Q. Yes, sir.—A. The only thing that intervened was an orange tree in the yard across from the Leahy Hotel.

Q. Well, you didn't point to the yard of the Leahy Hotel. Will you go over and locate that?—A. (Indicating.) Here is the Leahy Hotel.

Q. Now, where was that tree?—A. (Indicating on map.) About here.

Q. Now, about where was that tree with regard to the interval that you put your hand on?—A. That tree was right there, sir (indicating).

Q. That is the interval? Between what two houses did you have that pointer, Mr. Leckie?—A. That is between the Cowen house, sir, and the house rented by Mrs. Leahy here on the corner.

Q. Is that house rented by Mrs. Leahy extended, or is it the Leahy House, also?—A. Yes, sir; that is the original Leahy Hotel; and since then she has rented this house—at least, the rooms in this house.

Q. Now, is that all you could see from that window?—A. Yes, sir; that is the only part you could see from that point down to there (indicating).

Q. About how much of that is shut off from that tree?—A. None of the upper portion. These two corners are shut off by the house (indicating); that tree is not high enough; it comes just a little bit below the railing.

Q. Now, how much could you see from the third window of the house?—A. From the third window you could see from about the center up to there (indicating)—about half of the porch.

Q. That was the western end of the barracks?—A. Yes, sir.

A member:

I would like to ask, if there is no objection to this, what time of the day or night this was?

A. I made two examinations, sir; one time about between 10 and 11, and the last time, I think, about half past 4 or 5 in the afternoon, all in the daytime. I went up there at night and could see nothing, because it was too dark; there were no lights in the building at all.

Q. Now, will you point out what you can see from the window next to the alley you told us about—if you will point it out?—A. The window next to the alley, I could see about 10 or 12 feet of the west corner of the upper porch from that window (indicating).

Counsel for the accused:

(Indicating about 10 feet of the west end of B Company barracks, on the north side, upper porch.)

(The witness resumed his seat.)

Q. I am going to ask you to go to the board again; I want to bring out something else. Mr. Leckie, I want you to tell the court what there is on the west side of that alley between the place marked "road" on that map, which is really Fifteenth street, and the Cowen corner?—A. I understand; from here (indicating) to this corner (indicating).

Q. Yes; I want to know what kind of fences, if any, are there?—A. From here there is a paling fence.

prove the fact that shot holes were there originally. So we introduce this man to describe these shot holes. He was sent there for that purpose and they were identified by a person living in the house, and it is clearly relevant, is the only way in which we can come at it, and to deprive us of that privilege shuts out from any defense at all in regard to the matter. If we can not show that in that way, then we would have to go and find somebody that was on the ground at that particular minute, and that is clearly absurd. It is not necessary to do anything more than to state such a proposition; in other words, these holes there now having been proven in evidence, we have the right to offer all sorts of expert testimony by people who have examined them as to where they were fired from, etc.

The judge-advocate:

I confess, may it please the court, that I am unable to analyze and grasp the sophistry of counsel. I call the attention of the court to the fact that we attempted to put upon the stand my good friend and assistant judge-advocate, Mr. Fitch, for the purpose of proving certain things about certain shot holes in the Yturria house. Mr. Fitch went there with Mrs. Yturria, and that testimony was ruled out by the court. Now, I ask you, may it please the court, if there is any difference between that class of testimony which we attempted to introduce at that time and the testimony attempted to be put before the court at this time? This witness testifies that he had gone to the house of Mr. Garza with Mrs. Garza. We do not know, as a matter of fact, that there is any Mrs. Garza; she has not been before this court; we do not know that the bullet holes he (the witness) saw are the ones testified to by Mr. Garza before this court last month.

Counsel for the accused:

They have been proven by this prosecution, and we expect the witness to so identify those bullet holes that the prosecution itself will admit they are the same bullet holes. Now, to say that we can not go and examine these premises afterwards seems to me to absolutely shut out any defense by us whatever. If the court will remember, an officer, Major Blocksom, was sent down there to investigate that matter, and when he came to the question of the identification of the shot holes in the Cowen house we got up and objected to Major Blocksom's going into that, because—and the objection was tenable—it had not been proven at that time that any holes were made there that night and that morning, and we still think that the ruling of the court allowing that evidence under those circumstances was erroneous. But as I stated just now, after it is once established that those holes were made there, if you are going to shut out this sort of evidence here, the evidence of men who have gone and examined it, properly identifying the holes so established in evidence, then we might just as well say we have no defense to offer here at all. We have got to sit down and accept as true the evidence of men on this witness stand who admit it is their purpose to sustain the allegation of that representation. It can not be contended for a moment that we are going to be shut out from any possible chance to examine the place in which this is alleged to have occurred; certainly not. It is an entirely different proposition, I submit, to attempt to prove, in the first place, that the shot holes were made there, from proving the nature of those holes after it has been proven in evidence that they were made.

The judge-advocate:

It is difficult for the prosecution to understand why it is that while Mr. Garza, who is a resident of Brownsville, and testified to that fact upon the stand, why didn't this witness get Mr. Garza and connect his testimony with the bullet holes which were testified about on the stand? Why go there and get some third person of whose existence the court is absolutely ignorant, to indicate these alleged bullet holes? We object to any testimony by this witness about any alleged bullet holes shown to him by a person of whose existence the court is entirely ignorant.

A member:

Before the court is cleared, I would like to ask that the testimony be read over in regard to Lieutenant Fitch's visit to Brownsville, and the ruling of the court.

The president:

I will ask the reporter to kindly read the question and answer.

(The reporter read the question and answer.)

Counsel for the accused:

May I make just one further remark? I wish to ask the court in the first place to examine our objection in reference to Major Blocksom's testifying in regard to these holes in the Cowen house. Now, to make clearer to the court our position in regard to Mr. Fitch, our objection to his testimony, putting it into legal phraseology, was that they were attempting to prove the existence of a fact by means of hearsay testimony. The prosecution was attempting to prove by a man sent down there six months after the event—who was not there—that certain bullet holes were made in a house six months before; there was not a scintilla of evidence showing from original source that this evidence was there; that these evidences of shot marks were there, by any competent evidence; therefore, all that he had to say at that time was hearsay. Now, the same thing applied to Major Blocksom's testimony—it was hearsay. He was there sometime after the thing occurred. Now, there has been proved by the husband of this woman and others—by Major Blocksom—went into it—the fact of those bullet holes, and we made to that an objection, as I recall it, because it had not been proven that the shot holes were there, and we placed it, as we contended, mark you, upon an entirely different basis. It is not proving the original fact, it is examining that original fact that has once been established in evidence, by witnesses who have gone there and who are competent to examine and tell you fully and frankly all about these shot holes.

Assistant judge-advocate:

May it please the court, Major Blocksom went into that house in company with Mr. Garza, and I believe his testimony shows he (Garza) had previously testified on this stand as a witness with reference to the time the shots were fired that caused these bullet holes, and the fact that the house had been shot into when the holes had been made had been proven by this Mr. Garza, and it was in his company, if I am not greatly mistaken, that Major Blocksom made his inspection. He was not relying upon some third party who had not appeared before the court or who was not afterwards summoned before the court for the identification of these bullet holes.

Counsel for the accused:

We do not dispute that fact. Our statement is in regard to the Cowen house.

The judge-advocate:

The best answer I think to the remarks of counsel will be to read the testimony of Lieutenant Fitch, which has been called for by a member of the court.

(The judge-advocate then read from the proceedings on page 97 [50] of the record, beginning with the question: "Q. Will you please give your name, rank, and present station," etc.?)

The president:

I would like to know, for my information, before we close the court, whether these particular shot holes were identified and marked on the photograph submitted in evidence to the court.

The judge-advocate:

No, sir; there is no picture of the Garza house before the court; I have none in my possession.

Counsel for the accused:

May it please the court, I think the judge-advocate has either missed the point of this objection or else he is confusing the court. My understanding of the point of difference between this objection and the one made to the testimony of Mr. Fitch is simply this: We objected to the introduction of the evidence from Mr. Fitch and the hearsay testimony of Mrs. Yturria, of the

bullet holes existing in her house at the time Mr. Fitch made his examination, as applying to the bullet holes made there on August 13, and that clearly appears in the objection read by the judge-advocate. This particular objection that is being made by the prosecution now is to our introduction of testimony in regard to the examination of certain bullet holes in the Garza house—not any bullet holes made there on August 13, but certain bullet-holes existing there at the time of the examination. It was on that particular point that Major Blocksom's testimony was admitted. He was allowed to testify to certain bullet holes in a certain house in Brownsville—not bullet holes made on the 13th of August, and we do not necessarily admit that—but he was competent to testify to his investigation and that the bullet holes existed at the time he made the investigation. So this witness is competent to testify to certain bullet holes existing at the time he made the examination.

The judge-advocate:

So much stronger then is the objection; if the defense is not willing to admit that the bullet holes upon which the testimony is based were made upon the 13th of August, then so much stronger do we object to any further testimony upon this subject as being irrelevant and immaterial.

Counsel for the accused:

I said he did not necessarily admit they were made on the 13th of August.

The judge-advocate:

I will insert in my remarks the word "necessary."

A member:

There was request made by the defense, which has not been brought out yet, in regard to the objections made when Major Blocksom's testimony was introduced.

Counsel for the accused:

Yes, sir; in regard to the marks in the Cowen house.

The president:

Yes; I will ask that that evidence be read.

The judge-advocate:

I read now from page 1238 [583]:

(The judge-advocate then read from the proceedings on page 1238 [583], beginning with the question: "Q. At the time of the August inspection, did you go into the house of one Louis Cowen?")

After the testimony had been read counsel for the accused stated:

That states our position exactly.

The accused, his counsel, the reporter, the witness, and the judge-advocates then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce the decision that the objection is not sustained. The question will be answered.

(The reporter read the question and answer, as follows: "Q. Who was with you when you examined those, and who showed you the shot marks, Mr. Leckie?—A. The wife of the man who lives in the house.")

Q. Tell the court where those shots were, Mr. Leckie?—A. Shall I point them out, sir?

Q. Yes.—A. (Indicating on map.) One shot was right there near the ground, sir (indicating)—one shot near the ground, in 6 inches of the floor and about 14 inches from the corner of the house. An-

other shot struck the front of the house on Fourteenth street, about 10 or 12 feet from the corner—from that corner (indicating).

Q. Indicating the northwest corner of the house?—A. Yes, sir; struck in the foundation——

Q. The northeast corner, I beg your pardon.—A. The northeast corner; yes, sir—struck in the foundation, about 10 or 12 inches from the pavement.

Q. Where was that shot evidently fired from, Mr. Leckie?—A. Which one, sir?

Q. The last one you just pointed out, the one that struck in the Fourteenth street side of the house.—A. It struck in this direction, sir (indicating).

Q. About the mouth of the alley and Fourteenth street?—A. Yes, sir.

Q. Where was the other shot fired from, the one on the alley side of the house?—A. That shot was fired about from the Cowen back gate, about 60 feet from the mouth of the alley.

Assistant judge-advocate:

May it please the court, this witness is not qualified as an expert, and expert testimony has already been introduced to show that he could not tell from these bullet holes from which direction these shots were fired, could not locate even approximately the position of the firer; and if this witness has not been shown to have been an expert in the matter of bullet holes, to give his opinion, it seems to me, is not proper at this time.

Counsel for the accused:

We have no reply to make. We were going to go on and say on what he bases his statement, may it please the court, so the court may determine then whether it is correct.

Assistant judge-advocate:

Is the witness, may I ask, introduced as an expert?

Counsel for the accused:

I have not laid any foundation as an expert; no, sir.

Assistant judge-advocate:

Then, any opinions he may render in this case are not the opinions of an expert. Is that, may I ask the court—is that what the court understands by counsel's remarks, that this witness is not introduced as an expert?

Counsel for the accused:

I would like to have the record read.

(The reporter read the record of the preceding remarks of counsel.)

Q. Did you trace the course of that bullet, Mr. Leckie?—A. Yes, sir.

Q. Tell the court——

The judge-advocate:

May it please the court, it seems to me this is manifestly unfair—when we interpose an objection to a question, and then for counsel to go on and ask several questions without objection being ruled upon. It is manifestly unfair.

Counsel for the accused:

We changed the question; dropped that question for a moment, and changed it, and so announced. I did not intend to do anything whatever in regard to that, but merely to ask if he traced it.

The judge-advocate:

Then, may it please the court, our objection stands for nil. Counsel called the attention of the court yesterday to the fact that the assistant judge-advocate ignored certain remarks and objections of his, and he commented upon the discourteous treatment. And I think now that we are entitled to as much courtesy as the defense.

Counsel for the accused:

And you shall have the same, sir.

The president:

Will the reporter please read the question?

(The reporter read the question and answer, as follows: "Q. Did you trace the course of that bullet, Mr. Leckie?—A. Yes, sir.")

The judge-advocate:

It seems to me that the question and answer ought to be disregarded by the court as evidence. We are entitled to a ruling upon that question.

Counsel for the accused:

I did not take into consideration that the question was answered, but I announced distinctly that we would drop that and proceed with another question.

The judge-advocate:

Do I understand the counsel to mean that the question as answered should not be considered as evidence?

Counsel for the accused:

We have no objection to its being stricken out. I had forgotten that the question was answered, but I said I would drop it, and approached the matter from another direction. I will ask the reporter to read the last question and the answer.

(The reporter read the question and answer, as above.)

Q. Tell the court what you found as to the course of that bullet.—A. Well, sir, I placed a wire rod where the bullet entered, a wire rod through where the bullet went out, and then went on the outside and took the line of the rod, the direction in which it was pointed.

Q. And from this did you determine the apparent——

Assistant judge-advocate:

I object to that.

Counsel for the accused:

Let me finish the question, will you, please?

The president:

Let the counsel finish the question.

Q. Did you from this determine the apparent direction from which the shot was fired or the firing point?

Assistant judge-advocate:

I object to that question on the ground that the defense has already introduced expert testimony here to try and show that nothing definite can be told by lining in the points of entrance and exits of bullets through various materials; that bullets are deflected to such a degree that it is impossible to determine even approximately the firing point—the direction of the firing point—and inasmuch as that was brought out by expert testimony, I think that no witness who has not qualified as an expert should go on the stand and be

allowed to testify as a witness on such point for the side that but a few days ago endeavored to bring out the fact that by the bullet holes nothing could be told of the direction in which the bullet came.

Counsel for the accused:

We have no reply to that, may it please the court.

The accused, his counsel, the reporter, the witness, and the judge-advocates, then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce that the objection is sustained.

Q. Did you find any other bullet holes in that house?—A. No, sir.

Q. Did you examine that side of the house carefully?—A. Yes, sir.

Q. Did you take any other steps to ascertain whether any other shot holes had been fired into that house—bullet holes made into that house?—A. I examined the whole house, sir, all over, and found no other bullet holes.

Q. Did you examine the Cowen house?—A. Yes, sir.

Q. Did you find any bullet holes in that?—A. Yes, sir.

Q. In what part of the house?—A. They were in the back part of the house, sir—they entered from the back of the house and the side.

Q. Point out where those shots were fired into the Cowen house.—A. (Indicating on map.) All the shots that I could find, sir, entered from this window on the side next to the alley, the back window and the second window from the back of the house, except one went into the casing right by the side of the side window, down about a foot upon the window.

Q. What window was that? The window on that back room there?—A. That was the last window on this side, sir (indicating); right there, sir, about there (pointing).

Q. All of them entered from the back of the house, then?—A. All of them went into that window (indicating) and this window (indicating).

Assistant judge-advocate:

I object to that. I think the witness stated that the bullets entered from the back and then corrected himself and said from the side.

A. No, sir; I said the bullets entered this window here (indicating), and also the second window on the back—the last window next to the alley, and the second window back from the alley, with the exception of one, which went into the casing of this window (indicating) about a foot up from the sill.

Counsel for the accused:

I would like to ask the court if by that ruling we are precluded from asking this witness to trace the course of these bullets, because I shall certainly get a ruling if that is not the ruling already. Do I understand the ruling of the court to maintain that we can not trace the direction of these bullets?

The president:

Not at all—not as I understand it.

Counsel for the accused:

I will proceed with that understanding.

Q. Mr. Leckie, did you examine that house carefully?—A. Yes, sir.

Q. Were you in company with anyone?—A. Yes, sir.

Q. Were you shown all the bullet holes that were in the house?—A. Yes, sir.

Q. By the inhabitants?—A. Yes, sir.

Q. By whom; tell us?—A. By Mr. Cowen, in the morning, and his wife, one of his daughters, and his son Harold—the oldest boy; and in the afternoon by Mrs. Cowen, Mrs. Leahy, and one of his daughters—next to the oldest daughter.

Q. Were there any shots at all in front of that house?—A. None that I could find, sir.

Q. None entered in front at all?—A. Not that I could find, sir, at all.

Q. Were there any shots that you found in the—did you find any shots in the annex to the Leahy Hotel, what is called the Leahy house?—A. I found one shot, sir.

Q. Where was that?—A. (Indicating on map.) This building here, sir, up high, about 9 or 10 feet from the ground (pointing)—came in from that direction, sir, about there.

Q. Was that the original entrance there, Mr. Leckie?—A. No, sir; that came through the Leahy house—through the Cowen house, I mean, to correct myself.

Q. Were there any shots at all in the Leahy Hotel?—A. I saw one, sir.

Q. Where was that?—A. That was up high, on the back part here (indicating), in the brick work.

Q. On the side toward the alley?—A. Yes, sir; up high; 10 or 12 feet (pointing).

Q. That is the only shot you found anywhere in the Leahy Hotel?—A. That is the only one I found, sir.

Q. Will you tell the court whether there is any doorway on the southwest end of the Garza house—that side there—the alley side?—A. There are two windows there, sir; there is no door.

Q. Are there any steps there of any kind?—A. No, sir.

Q. What is there from the southeast corner of the Garza house—standing along the alley there—is there a fence there or not?—A. Yes, sir.

Q. If so, what kind of a fence?—A. A high board fence, sir.

Q. I mean on the northeast now; the northeast portion of the Cowen alley—there is a high board fence there from the Cowen house along back toward Fifteenth street, isn't there?—A. You mean along here (indicating)?

Q. No; I mean on the Garza side.—A. From that little house there (indicating), to the Garza side, sir, is a high board fence.

Q. Now, what is the nature of the ground along by that board fence there?—A. Well, where the wagons have been going through it is worn on each side—there is a little mound there about 8 inches high where the wagons have worn the center of the road down.

Q. You say that is grass, or what is it?—A. No, sir; it is just soil.

Q. Is there any slope to it; if so, what kind and which direction?—A. It has a slope toward the road, sir.

Q. Well, is it a steep or an abrupt slope?—A. Well, it is not a very steep slope.

Assistant judge-advocate:

May it please the court, unless counsel will inform us what the purpose of this testimony is, any testimony as to what the ground in that alley is at

present, it seems to me, is absolutely irrelevant unless it is shown to be in the same condition that it existed on August 13.

Counsel for the accused:

We do not claim that the conditions are the same.

Q. Is there any sidewalk of any kind along there?—A. No, sir.

Q. Tell us the course of the bullets that you traced in that Cowen house, Mr. Leckie?—A. The course of the bullets in the Cowen house, sir?

Q. Yes; take each of them up and trace them as near as you can recollect them.—A. Well, the bullet that entered in the casing of this last window, the bullet that entered into the casing here (indicating), went through this room (indicating) and struck this second room here (indicating), and then hit the wall and went into the front room, which enters from the street. The other bullets went through a great many—one through this partition (indicating), some went on through and struck the annex to the Leahy Hotel, and others went through the casing here and went into glass about the wardrobe, about there (indicating), in that room. Most of them, sir, lodged in this partition (indicating) across this end of the house.

Q. That is the southeastern end of the house, the end farthest from the alley?—A. Yes, sir; the end facing the river.

Q. Did you examine the alleged shot marks in the Tillman saloon?—A. Yes, sir.

Q. Did you extract a bullet from any one that was alleged to have been shot into that saloon?—A. Yes, sir.

Assistant judge-advocate:

May it please the court, there may be a considerable number of bullet holes in the Tillman saloon; it is a saloon in Brownsville, and there may have been other shots there some time, and unless the bullet holes are identified more particularly we shall object to that.

Q. Did you examine these bullet holes that you have just spoken of that were alleged to have been made there on the night of the 13th of August last?—A. Yes, sir.

Q. Did you extract any bullet among those that were alleged to have been shot there?

Assistant judge-advocate:

I object to that unless the witness first shows the foundation for the statement that the bullets that made these holes were fired on the night of August 13. There has been nothing brought out so far to identify these bullet holes.

Counsel for the accused:

The point about this thing is, these were alleged to have been fired. A great deal of evidence has been offered here by the prosecution on that particular point, and those were the bullet holes that we asked about. Perhaps if the judge-advocate will indicate in what way he wants us to further substantiate this, we may be able to do it without closing the court. We are perfectly willing to do it.

Assistant judge-advocate:

May it please the court, the witness stated he examined the bullet holes that were alleged to have been fired there on the night of August 13, but as to who made the allegations nothing has been said before the court.

Q. Tell us who showed you those bullet holes.—A. Mr. Tillman, sir.

Q. The owner of the saloon?—A. Yes, sir.

Q. He pointed them out to you, did he?—A. Yes, sir.

Q. Now, I will repeat my question. Did you at any time extract a bullet from those that were alleged to have been fired on the night of August 13?

Assistant judge-advocate:

We object to that question being answered unless it has been shown definitely that the bullet that was extracted by the witness was undoubtedly fired on the night of August 13, by the testimony of some one who was there that night, who knew that particular bullet hole was not there on the evening of the 13th prior to the shooting, and that it was found there the next morning, and that the bullet that was extracted by Mr. Leckie was without doubt, and beyond a doubt, the same bullet that was fired in there on the night of August 13 at the time in question. And it seems to me that any evidence of any bullet extracted by the witness—either by this witness or any other witness—is absolutely irrelevant unless it first be shown that that bullet must have been fired on that night, and shown beyond a doubt.

Counsel for the accused:

Now, I simply call the court's mind to the fact that Major Blocksom some months afterwards extracted a bullet that was alleged to have been shot there that night, and was allowed to testify to it, in the Yturria house. I have no further reply to make.

Assistant judge-advocate:

I wish, before the court is closed, to call the attention of the court to the fact that Major Blocksom, in the Yturria house, dug out a bullet, if I am not greatly mistaken, in the presence of both Mr. Garza and Teofilo Martinez, the caretaker, one of whom was in the house at the time the bullets entered, and the other of whom inspected the house the following morning, and in that way the time that the bullet entered was fixed; but in this present instance there is absolutely nothing to show by whom the allegation was made to the witness that the bullet was fired on the night of the 13th of last August. It might have been fired, so far as any evidence produced this afternoon by anyone shows, at any other time before or since. It is absolutely unidentified, and any testimony from the witness on that point will be most strenuously objected to by the prosecution until proper means are taken to identify the bullet first.

Counsel for the accused:

Now, as he recalled the court's recollection to the Yturria house—as I understand, there has not been a man, woman, or child who was shown to have been in the Yturria house that night——

Judge-advocate:

There has been, may it please the court——

Counsel for the accused:

Just a moment. There was a man, to wit, Teofilo Martinez, I think his name was, who was sleeping on the upper back porch, but who, you will recall, hied himself hence, and went down into a brick place and concealed himself until the following morning. I think the testimony will bear me out in that. Mr. Yturria, the owner, certainly was not there. Now, this particular case stands on all fours with that, as we understand it. Here is Mr. Tillman, who was unquestionably in his house that night, and who examined these shot marks with as much intelligence as Teofilo Martinez, and who certainly is as competent to point out the shot holes of the bullets fired that night as Teofilo Martinez.

Assistant judge-advocate:

The witness, Teofilo Martinez, testified before the court, if I am not greatly mistaken, that the day before the shooting there were no bullet marks, and the morning after the shooting he examined the house and found these bullet marks. And Mr. Tillman certainly appeared before this court as a witness, and there is no testimony pointing out the certain location of these shots in the Tillman saloon, other than that brought out by Major Blocksom.

Counsel for the accused:

And we put this witness on all fours with Major Blocksom.

Assistant judge-advocate:

But Major Blocksom inspected the Yturria house in company with the caretaker, who testified here before the court that the bullet holes—the same ones that Major Blocksom inspected—were the result of shots fired on the night of August 13; and Mr. Tillman has not done so; the bullet that Mr. Leckie picked up has not been identified by anyone.

Judge-advocate:

And furthermore, may it please the court, Mr. Tillman, about whom an analogy has been drawn as to Teofilo Martinez, it has been testified before this court that Mr. Chace and Mr. Bodin saw Mr. Tillman come around the corner of Thirteenth street, going for his home just as fast as he could before any shots were fired into his saloon. The analogy is not the same, because Martinez testified he stayed there until he realized that the soldiers were making it too hot for him to stay there with safety.

Counsel for the accused:

Doesn't it appear in Mr. McDonnel's testimony that Mr. Tillman went down to his saloon in company with Mr. McDonnel on the same night?

Judge-advocate:

After the shooting was over; yes, sir.

Counsel for the accused:

And isn't it true that Major Blocksom was allowed to testify as to the shot holes in this particular place, and is practically on all fours with this witness? I think so. We have no further argument.

The accused, his counsel, the reporter, the witness, and the judge-advocates then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce that the objection is not sustained. The question will be answered.

Counsel for the accused:

Please read the question.

(The reporter read the question, as follows: "Q. Did you yourself at any time extract a bullet from those that were alleged to have been fired on the night of the 13th of August?")

Counsel for the accused:

I will change that question. Make it, "into that house." Let us hear how it reads now.

(The reporter read the question as amended, as follows: "Q. Did you yourself at any time extract a bullet from those that were alleged to have been fired on the night of the 13th of August into that house?")

A. The only bullet that I extracted was from a post in front of Crixell Brothers saloon.

Q. Where is that, with reference to this Tillman saloon?—A. Well, Mr. Theophile Crixell and some others——

Q. Where was this post, I asked, with respect to the Tillman saloon?—A. Oh, this post?

Assistant judge-advocate:

I interpose the objection that there has been no evidence, I believe, showing that a bullet struck or lodged in any post outside of this house.

Counsel for the accused:

There is evidence, may it please the court, by Major Blocksom that a shot passed through this house, and we purpose to show that this particular shot is alleged to have passed through the door, passed directly across the street.

Assistant judge-advocate:

I think Major Blocksom testified, it appears, that he does not know where that bullet lodged; he testified that one bullet went through, but I think that the point of lodgment was not stated, and therefore a bullet that is picked up some eight or nine months afterwards, out of a post, as I understand it, which is in the street and in some building other than that which has been testified to as having been fired into, is not relevant. The court just ruled that this testimony was relevant in that the fact that Tillman's saloon had been shot into had been established, but if the witness dug a bullet out of some post which, as I understand it, is outside of this saloon, and across the street, near some other saloon, it is not relevant, and I appeal to the record, so far as Major Blocksom's testimony is concerned; we have it here.

Counsel for the accused:

As I understand, this question has been passed on already, practically—the place of the bullets that were alleged to have been fired into the Tillman saloon.

Judge-advocate:

Now, if this question is allowed, may it please the court, what is to prevent counsel from going on and saying, "Did you go over to Matamoros? Did you see a house over there with a bullet in it?" And then go on with the same line—that this was a bullet fired out of a Mexican's gun, fired into the alley in the rear of Tillman's saloon. I think the question is absurd.

Assistant judge-advocate:

May it please the court, on page 1244 [586] of the record of this present court-martial, in the direct examination of Major Blocksom, are the following questions and answers:

(The assistant judge-advocate then read from the proceedings on page 1244 [586], beginning with the question, "Did you have occasion to visit officially Mr. Tillman's saloon?" and ending with the answer, "I don't know, except from hearsay, where one of them went, and I don't know actually where any of them went.")

Assistant judge-advocate:

Now, may it please the court, the bullet dug out by this witness was not identified by Major Blocksom, who testified, as I have just read, that he did not follow up the course of any of these bullets, and did not know actually where any of them lodged, and only knew from hearsay where one of them lodged.

Counsel for the accused:

Now, may it please the court, we understand, mark you, that the court has passed on this question, and if we go into that on direct examination as to where these bullets lodged with Major Blocksom, why can we not go on with it with Mr. Leckie? That is our position. We have no further argument to make.

Assistant judge-advocate:

May it please the court, Major Blocksom made this inspection immediately after the shooting, where the bullet holes in the woodwork would appear fresh, and the investigation, as conducted by the witness, was made, it appears, nine months afterwards, and the bullet which he dug out, although it was doubtless alleged to him that it was fired that night, possibly it was not fired on that night, though he himself may have acted in perfect good faith in the matter; and that is our contention, that the bullet which he dug out may possibly be a bullet that was not fired on the night of August 13.

Q. So this lead you extracted, you extracted in small pieces, did you?—A. Yes, sir.

Q. It bore no resemblance to a bullet when you took it out—it was mostly filings and cuttings?—A. Yes, sir; that is right.

Q. Did you weigh these?—A. No, sir.

Q. Are you prepared to state that this bullet or pieces of lead that you extracted from this hole could not have come equally as well from a .30-caliber Springfield cartridge, such as used for guard purposes in the United States Army, and was then, equally as easy as it could have been a lead bullet from a .44 or .45 caliber revolver?—A. It could have been. I would like to give my reasons for stating why I thought it was a .44 or .45, though.

Assistant judge-advocate:

We have no objections, except that this witness has not qualified as an expert in the matter of bullets. He merely, as I understand him, with a brace and bit extracted a large number of small lead filings and cuttings, and I do not see how anyone, even though he is an expert, can give an opinion as to what kind of gun the bullet was fired from unless he has something to go by besides a small, or large, number of very small filings.

Counsel for the accused:

I would like to call the court's attention to the fact that that is argument. The question is, the witness has asked to explain his answer. The court has ruled many times that he has a right to do so.

A. I do not want to give an opinion; just my reasons for believing it was a .44 or .45.

The President:

The witness can explain his answer.

A. The reason I think it was either a .44 or .45 was on account of the size of the hole where it entered the post.

Q. Isn't it a fact that this bullet passed through, to the best of your belief, other substances before it reached this post?—A. That I can not state.

Q. You do not know, then, whether this bullet had become deformed in any manner while it was en route from the muzzle of the piece from which it was fired to the point where it finally lodged and from which you dug it out?—A. I can not say. It may have been fired very straight; I don't know.

Q. How far into the wood had this bullet gone?—A. The piece of wood was about 2 inches thick—it was a 2 by 4, and about 2 inches thick—and it didn't go through. I should judge it went about 1⅔ inches. You could stick a pencil in there.

Q. Only about 1⅔ inches?—A. Yes, sir.

Q. Now, is it not a fact that where a bullet is fired from the ordinary .45 revolver or rifle with the ordinary lead bullet, or whether fired from the regular Springfield rifle. that the bullet in either case would penetrate in 1⅔ inches of wood unless the bullet had previously had its progress impeded?—A. I can not say about the rifle. I have seen cases where the .44 would not go through 2 inches of wood. The rifle, I do not know.

Q. So the only reason you have, then, for stating that this, in your opinion, was a .44 or .45 caliber lead bullet was the size of the hole, the entrance into the wood?—A. The size of the hole, bullet, and amount of lead.

Q. But you have just stated that the amount of lead in the .45 pistol cartridge and the United States Springfield guard ammunition is just about the same?—A. Not in the ordinary .45, but in the .45 Army Special, as they term it—220-grain bullet.

Q. But you didn't weigh these filings?—A. No, sir.

Q. You do not know whether you got all of them out or not?—A. No, sir.

Q. Are you prepared to state here that the point of the augur did not merely dig out the lead from the inside of the steel-jacketed bullet?—A. Yes, sir; we cut the hole out entirely, so if there had been any steel jacket there we would have found it.

Q. There was no steel jacket there?—A. There was no steel jacket there.

Q. And you have no means of knowing what that bullet passed through before it reached there?—A. I have not, sir.

Q. Or whether the jacket was torn off in mid-air, as often happens?

Counsel for the accused:

We object to that. It has not been shown, and this witness has not admitted that this often happens.

Assistant judge-advocate:

May it please the court, a number of witnesses have already been introduced by the defense to show that steel-jacketed .30 caliber Springfield rifle bullets very often in passing through different substances have their jackets either torn or ripped, so as to be entirely or partially off.

Counsel for the accused:

We admit that. We do not admit that happens in going through the air—that is what we object to, and we object to the question in that form.

Q. Do you know of your personal knowledge when that bullet was fired into that post?—A. I do not, sir.

Q. With reference to the Cowen house and the bullet marks thereon, most all of the bullets apparently entered the house—the southeast corner of the house—did they not?—A. Do you object to my going to the map before I answer?

Q. No, sir.—A. (Indicating on the map.) I will show you here: The bullets entered from the last window on the alley side and from the second window on the back of the house from the alley, and one bullet went into the casing of the window on the alley side.

Q. There were some shot holes in the high wooden fence just opposite the Cowen house, weren't there, on the alley side?—A. I found one shot, sir.

Q. The rest of the shots had apparently been fired at sufficient elevation to clear the fence?—A. Yes, sir.

Q. You do not know, however, whether that fence was the one that was there at that time, except from its appearance?—A. That is all, sir.

Q. When you spoke of some of these bullets having entered the Cowen house from the back, did you mean to give or create the impression that the shots must have been fired by some one standing directly in the rear of the Cowen house?—A. I don't know what impression the court got.

Q. Did you intend to convey that impression?—A. I mean to state that, in my opinion, from where the shots struck the house they were fired from the rear.

Q. All of them?—A. All of them.

Q. And from the alley in the immediate vicinity of the house?—A. Yes, sir; the alley known as the Cowen alley.

Q. By the way, why did you visit Brownsville, Mr. Leckie, on this last occasion?—A. I was ordered down there, sir.

Q. Do you know why?—A. Yes, sir. To investigate the trouble that happened there on the 13th of last August.

Q. Do you know how you happened to be ordered down there?—A. Why, no, sir. The department commander ordered me. I do not know how he came to order me, or anything of that kind.

Q. Unless your instructions were confidential, I wish you would state to the court what your orders were to do when you got there. If they were confidential at all, why, of course, we will not ask this question?—A. I do not consider they were confidential. They were given to me just as the evidence I have given here indicates—to trace these shots the best I could; to see what part of the barracks could be seen from the Leahy windows—the upper windows.

Q. What else?—A. To make an inspection of the Tillman saloon.

Q. Anything else that you recall?—A. And to see if Ellison was in jail—if he was still held there, and why. That is about all that I remember, sir.

Assistant judge-advocate:

We have no further questions.

Counsel for the accused:

We have just one question about a matter that I want to make sure that I am correct in my understanding of.

REDIRECT EXAMINATION.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. You stated that from the first window upstairs in the Leahy house—and by first window I mean the window toward the alley.—A. Yes, sir.

Q. That you could not see any other barrack other than the part of B barracks that you described?—A. That is the only, sir—that is all.

Counsel for the accused:

I just wanted to know for sure that that was in the record.

QUESTION BY THE COURT.

Q. What obstructed the view of the east end of B Company barracks from the third window of the Leahy Hotel—that is, the window nearest Elizabeth street?—A. (Indicating on map.) You mean this window up here nearest to Elizabeth street?

(The question was repeated.)

A. You mean this window here, and you consider this as the east end?

Counsel for the accused:

Not to-day; no, sir. We want to know where our witnesses are and whether they are coming or not. We are ready to go on to-morrow morning if we can get the witnesses.

A member:

I would like to have that understood, if counsel can go on to-morrow morning?

Counsel for the accused:

I said distinctly that we expect to have our witnesses here to-morrow morning.

The president:

I can see no harm in wiring to Washington, to ask whether the witness is there, and if he is, to request that he be sent here as soon as possible in order to avoid delay.

A member:

I move that the judge-advocate be instructed to take the necessary steps to get this witness as soon as possible, and that we adjourn until 10 o'clock to-morrow morning.

The president:

If there is no objection, the judge-advocate will be so instructed and court will now adjourn until to-morrow morning at 10 o'clock.

The court then at 4.20 p. m., adjourned to meet at 10 o'clock a. m., March 20, 1907.

CHAS. E. HAY, jr.,
Captain, Acting Judge-Advocate, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., March 20, 1907.

The court met pursuant to adjournment at 10 o'clock a. m.

Present: All the members of the court and the judge-advocates. The accused, his counsels, and the reporter were also present.

The reading of the proceedings of March 19 was dispensed with.

The judge-advocate here addressed the court as follows:

Before proceeding with the trial this morning, I wish to say to the court that I have given due consideration to the remarks of counsel made near the close of yesterday's session, in which he made some statement about wishing the testimony of one Corporal Ryan, of Company I, Twenty-sixth Infantry, and at present my recollection is not clear whether he made this statement to the court, or to me out of court, but either way, there was but one point he wanted to bring out by Corporal Ryan. I have reconsidered my objection yesterday to having this admitted on the part of the prosecution——

By president:

I understand counsel made the statement to the court.

By counsel:

The statement is of record. I don't remember what I said exactly, but it was to cover one point about some ammunition in one place, and if the judge-advocate will stipulate this in we will agree on the stipulation and submit it later.

By the judge-advocate:

The point I wish to bring before the court is this: Counsel told me that the only bit of evidence, as I understood it, that he wished to bring out by this wit-

ness was the fact that Corporal Ryan, the then artificer of a certain company there at Fort Brown, in his hurry to catch the troop train that was leaving Brownsville, left hanging on the wall three bandoliers filled with cartridges, and I am prepared now to admit that fact, and Mr. Fitch, I think, wishes to add a few words to that admission of ours.

By assistant judge-advocate:

As the judge-advocate stated, we are willing to admit that said Corporal Ryan may have left these two or three bandoliers of cartridges in his company; but if the defense should at the same time admit that this storeroom was found in an untampered condition, the locks had not been tampered with at the time Captain Lyon and the quartermaster-sergeant entered this storeroom, that it showed no signs of having been broken open in the meantime. That is the only point I wish to bring up; that this storeroom apparently looked as if it had not been tampered with by any parties between the time of the departure of the Twenty-sixth Infantry and the arrival of the Twenty-fifth Infantry.

By counsel:

I stated that we would agree on a stipulation as to this ammunition being hung up on the wall—the story as it came to me was the storeroom was open. If the judge-advocate is not willing to stipulate it, I have nothing further to say. If he can't agree on the terms without—I am going to introduce Captain Lyon, who was present when the storeroom was opened, and if the judge-advocate wants to bring in anything about its being locked, I have no objection—but the story as told to me was that the storeroom was open and these three bandoliers were left hanging on the wall. If he is not willing to admit it in that phase it is of no object; but there is no use making an admission of a fact and then tie it up so it amounts to nothing, and if he is not willing to agree on a stipulation we had better drop it.

By assistant judge-advocate:

As counsel has just stated he is willing to talk it over out of court——

By counsel:

That is always the way stipulations are introduced. It has just been stated that if Corporal Ryan was placed on the stand he would swear to so and so, and if the judge-advocate is willing to agree on a stipulation I am willing to act on it.

By president of court:

That can be agreed on out of court.

By counsel:

Certainly; it will not take ten minutes.

Capt. SAMUEL P. LYON, Twenty-fifth Infantry, a witness for the defense, was recalled, reminded that he was still under oath, and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE ACCUSED.

Q. Captain Lyon, I want to ask you a question or two about the interview, at which you testified you were present, between the committee of citizens of Brownsville and the commanding officer about 11 o'clock on the morning of August 14 last. Did you have occasion yourself to make some remarks to the assembled committee and officers? If so, tell the court under what circumstances.—A. The remarks of the committee, made by Mr. Kelly and Mayor Combe, and the general attitude of the committee gave me the idea that they did not understand the position of the officers of the battalion of

the Twenty-fifth Infantry at Fort Brown, and for that reason I asked permission from the commanding officer to make a few remarks to the committee. He gave me that permission, and I said to the committee—the exact words I can't recall—but the import of what I said was that it appeared to me that the gentlemen who were there present, representing the people of Brownsville, did not realize the fact that there were none of them or any of the citizens of Brownsville who had as much at stake in this matter as we, the officers of the Twenty-fifth Infantry, had. That they appeared to me not to give us credit for being willing to do everything in our power to find out who the guilty persons were, whether they were soldiers or citizens, and as not being anxious to apprehend these men in case they were soldiers; and I said further that, unless the committee would thoroughly understand that point and give us the credit due us for being anxious to find out who did this shooting, that it would be impossible for us to cooperate successfully in discovering the guilty parties. That's about the gist of all I said to them.

Q. Had you received any orders from Major Penrose previous to this time about locating the guilty parties in any way? If so, what were they?—A. In addition to the orders regarding the inspection which took place on the morning of August 14, Major Penrose directed me to examine every man in my company to see if I could discover anything from their statements, and to put these in such shape that they could be sworn to as affidavits. Also to interview my noncommissioned officers and certain of the old and most reliable soldiers and try to impress them with the necessity of doing everything in their power to discover the guilty men if they were in the battalion.

Q. Do you remember whether this was previous to or after this interview of the committee?—A. To the best of my recollection this was before the meeting of the committee.

Q. So that before the committee came there at all the officers of the battalion were proceeding along these lines under instructions from the commanding officer?—A. I don't know——

Q. At least you were?—A. I was; yes, sir.

Q. You don't know of your own knowledge what orders had been given to the others?—A. No, sir.

Q. You said in your direct examination here that your remarks made to the assembled committee and officers were made after one or two—I think you mentioned Mr. Kelly and Mayor Combe—had made remarks. What was the nature of these remarks made previous to yours? I don't want to know what they said, I want to know how they were made, whether in the form of addresses or in the form of conversation?—A. They were in the form of addresses. The first one to speak was Mr. Kelly; he, I believe, was chairman of this committee. I can't pretend to remember his exact language, but the import of it was——

Q. I don't care for his exact language, I wanted to know simply the nature or kind of remarks—whether speeches or general conversation.—A. No, sir; they were speeches.

Q. Was it before, during, or after these set speeches that this general conversation, where questions were asked, occurred?—A. To the best of my recollection it was after. I think there was no general conversation other than the ordinary introductions before these speeches were made by Mr. Kelly and Mayor Combe

Q. And yourself?—A. Also Major Penrose.

(The judge-advocate declined to cross-examine the witness.)

CHARLES H. MADISON, a witness for the defense, was duly swor and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Please give your name, your residence, and occupation.—. Charles H. Madison; Pittsburg, Pa., No. 3925 Madison avenu Baltimore and Ohio train service.

Q. Do you know the accused? If so, state who he is.—A. Maj Penrose, sir.

QUESTIONS BY THE ACCUSED.

Q. Have you ever been a soldier?—A. I have, sir.

Q. What has been your length of service?—A. Eleven years, ni months, and eight days, sir.

Q. What regiments did you complete that service in?—A. T Twenty-fourth and Twenty-fifth Infantry. Last discharge, Twent fifth Infantry, sir.

Q. Did you ever see any service in Cuba in the Twenty-fif Infantry?—A. In Company C, from the 1st of July up to 1900, think; I was discharged at this post, sir.

Q. Were you in any battles in Cuba?—A. In the battle of Caney, sir.

Q. What company did you belong to on the 13th of Augu 1906?—A. C Company, Twenty-fifth Infantry, sir.

Q. Where were you stationed?—A. At Fort Brown, Tex.

Q. Where did you sleep in barracks on the night of the 13th August?—A. I slept in the small room made for noncommission officers, myself and another sergeant. If I am not mistaken, t south end of the quarters.

Q. Who was that sergeant?—A. Sergt. Newton Carlisle.

Q. Did you receive any orders from Sergeant Carlisle that night?- A. After being awakened by the explosion of firearms, the men bei confused and making a lot of noise, Sergeant Carlisle trying to ke them quiet, and some of the men calling for the man in charge quarters, Sergeant Carlisle told me to go downstairs and see if t noncommissioned officer in charge of quarters was down there a tell him to come up and open the racks, that the call to arms had be sounded.

Q. Did you execute that order?—A. I did, sir.

Q. Did Sergeant Carlisle carry out that order you took to him?- A. Sergeant Brawner was the man in charge of quarters.

Q. I should have said Sergeant Brawner. Did you get your ri out of any rack opened by Sergeant Brawner?—A. Sergeant Bra ner went upstairs and began to open the rack, and I got a rifle out the first rack opened.

Q. Where was Major Penrose at this time?—A. At the time I we downstairs Major Penrose was standing a short distance in fro of the company parade, sir, not very far from the steps.

Q. While you were getting your rifle from a rack did you hear any noise in the quarters of any racks being opened in any other way?—A. I did, sir.

Q. What was the character of that noise?—A. Some one exclaimed, "If you can't get the racks open, break them open," and the men began to try to break the racks open and try to get their rifles, sir.

Q. While Major Penrose was standing out there in the position you describe, did you hear him give any orders?—A. I did, sir.

Q. What were those orders?—A. He gave orders for the men to get their rifles and fall in promptly.

Q. Did he explain how they were to get their rifles?—A. If I am not mistaken, I think the major said, "If you can't get them any other way, break the racks open;" at least he said for the men to get their rifles and fall in promptly.

Q. Did you receive any orders from Major Penrose that night with respect to any patrol duty?—A. I did, sir.

Q. What were those orders?—A. Lieutenant Grier was in command of the company at the time, and called me personally, and told me to step up and report to the commanding officer. I reported to the commanding officer and he told me to take two men and make a careful patrol around the hospital, quartermaster storehouse, commissary, and post noncommissioned staff and report back to him. I made the patrol and when I reached the hospital first-class sergeant of the hospital claimed that he had heard—I asked him if there was any trouble, anyone been fired into or anything—and he said he heard some shots passing over the quarters.

Q. What was the purpose you were sent out for with that patrol?—A. To see if any of the buildings had been fired into, sir, or anyone had been hurt.

Q. In executing that order did you pass by any sentinel's post?—A. I passed by two sentinels' posts; I went by No. 1 and also No. 4.

Q. Were you challenged by No. 4?—A. Yes, sir; I was.

Q. Did you report back to Major Penrose the result of your patrol duty?—A. I did, sir.

Q. What report did you make to him?—A. When I returned I found the major and Captain Lyon and another man, I think Mayor Combe, standing at the gate. I reported to the major that a first-class sergeant of the Hospital Corps claimed that a few shots had passed over his building there, and the major told me to report back to my company for duty to the company commander.

CROSS-EXAMINATION.

QUESTIONS BY ASSISTANT JUDGE-ADVOCATE.

Q. Corporal Madison, you stated that you slept in the separate room with Sergeant Carlisle, in C Company barracks. Is that correct?—A. I did, sir.

Q. In C Company did the first sergeant sleep in married men's quarters at a distance of several hundred yards from the barracks?—A. Our first sergeant is single and slept in the quarters, sir.

Q. Did not all the sergeants in C Company have separate rooms aside or apart from the room in which the privates slept, and in

which the gun racks were kept?—A. We slept in one end of the quarters in a small room, myself and the chief of the fourth section, who was Sergeant Carlisle.

Q. Did the other sergeants sleep in separate rooms?—A. They did, sir.

Q. On which floor?—A. In the upper dormitory in the main quarters, sir.

Q. But the sergeants all slept in rooms other than those occupied by the corporals and privates?—A. No, sir; there wasn't room enough for all the corporals, but myself and two or three other different corporals slept in with the sergeants.

Q. How many corporals slept in the big squad rooms with the privates?—A. I disremember, sir.

Q. To the best of your recollection, how many were there and who were they by name?—A. I can tell you by name how many slept in the rooms, and after that I can perhaps figure it out. I slept in the room with Sergeant Carlisle, Corporal O'Neil with Sergeant Brawner, and Corporal Washington in the room that Sergeant Harley occupied. The rest of the corporals were sleeping out in the quarters with the rest of the company.

Q. How many corporals were on duty in your company at that time?—A. There was five; one was on furlough.

Q. And three of the five corporals slept in separate rooms?—A. Yes, sir.

Q. Was there any corporal of your company on guard that night?—A. Not to my knowledge; to my knowledge there were not.

Q. So there should have been two corporals sleeping in the main squad room on the night of August 13?—A. Yes, sir.

Q. And the noncommissioned officer in charge of quarters slept in a separate room, Sergeant Brawner?—A. He did, sir.

Q. Did you get your own rifle when this rack was opened?—A. I did not, sir; I got a rifle out of the first rack that was opened.

Q. Did you get your rifle before you went downstairs?—A. I got a rifle that was not mine.

Q. I mean did you get a rifle before you went downstairs?—A. I did not, sir.

Q. You went downstairs first and came back and got your rifle?—A. Came back with the man in charge of quarters and got a rifle out of the first rack he opened, sir.

Q. You stated something to the effect that you heard Major Penrose give orders for the men to get their rifles and fall in promptly. Are you prepared to swear under oath that you also heard him say to break the gun racks open if they couldn't get the guns out any other way?—A. I am.

Q. Or is that merely an idea that has come into your mind since?—A. No, sir; that is not an idea that has came into my mind since; I am ready to swear under oath.

Q. And you went upstairs then and got this rifle out of the rack that was opened? Were there any other racks opened at that time, to your knowledge?—A. It was dark upstairs, and I was sent downstairs to find the noncommissioned officer, and I found him and went back with him, and the rack he opened was the one I got the rifle out of and went down and fell in line.

Q. Did you not hear any racks being smashed open before you got back upstairs?—A. I did not, sir.

Q. How many men did you take with you on this patrol?—A. I taken two men, sir.

Q. When you were challenged by the sentinel on No. 4 post—by the way, was his name Private Ash; do you know?—A. I disremember his name, sir.

Q. But did he state to you whether or not he had heard any bullets coming by?—A. Well, no, sir; he did not.

Q. He didn't make any claim to you that he had heard bullets whizzing over his head, did he?—A. Not to my recollection at the present time, sir.

Q. So the only person you met during your patrol about the post who claimed he had heard any bullets was this sergeant of the Hospital Corps; is that correct?

By associate counsel:

May it please the court, I would request that question be modified to accord to the fact.

Q. Did you see anyone on your patrol about the post, other than the sergeant of the Hospital Corps——

By associate counsel:

May it please the court, he didn't make a patrol about the post.

(Witness's answer, last one, page 2393 [1133], was read over.)

Q. When you were on this patrol which was sent out by the commanding officer, did you see anyone at all, other than the sergeant of the Hospital Corps, who claimed that he had heard bullets?—A. He is the only—I seen him and some of the convalescents standing on the porch at the hospital.

Q. But at no other place other than the hospital?—A. I went to the noncommissioned staff quarters and went to the doors and knocked on the doors and awakened some of them, and they come to the door and claimed they had not heard the firing.

Q. But the only person, however, you met on this patrol who claimed he heard bullets was this sergeant of the Hospital Corps; is that so?—A. Indirectly I could not say, sir, because the sentry may have told me he heard them. I never had much of a conversation with the sentry; he halted me, and I replied it was a patrol.

Q. The only man, however, you reported to the commanding officer as having told you he had heard bullets was this sergeant of the Hospital Corps?—A. It was, sir.

Q. Did you visit the guardhouse during this patrol?—A. I went past No. 1 going out on my patrol.

Q. You didn't speak to the sergeant of the guard or the corporal of the guard?—A. I were halted by No. 1 and advanced.

Q. Advanced by the corporal of that relief?—A. Yes, sir.

Q. Do you know whether that was Corporal Wheeler or not?—A. I think it was, I am not sure; I think he was on guard that night.

Q. Corporal Wheeler, of your company?—A. Corporal Wheeler, of D Company.

Q. Did he state to you at the time anything about having heard any bullets?—A. He did not, sir; I never asked him anything concerning that.

By assistant judge-advocate:

May it please the court, there are about 30 pages of testimony given by this witness a few days or weeks ago before the Senate committee, and I request that the court either take a recess—time enough to enable us to look that over and see whether he has made any statements on the stand here inconsistent with previous statements—or else they allow the witness to be excused now without further continuing the cross-examination, but reserving the right to recall him this afternoon.

By associate counsel:

May it please the court, I think that is a most unusual request and I see no reason why it should be granted. This man had given certain definite testimony before this court and has been turned over to the prosecution to exercise their right to cross-examine him on that testimony. They have perfect freedom on this cross-examination, they can make use of anything before them. I don't see any necessity of granting any delay to look up testimony this witness has given before the Senate committee—I don't see that that investigation has anything to do with this trial, independent of it in every sense of the word.

By judge-advocate:

The memory of counsel is perhaps failing him. If he will remember the early days of the trial, that request was made almost every time we turned a witness over for cross-examination, they asked for a brief recess to look up what this witness, who happened to be a Brownsville witness, said before the Purdy investigation. If it was fair then, I don't see why it is not fair now. But we do not insist on this recess. As the assistant judge-advocate has said, we are willing now to excuse the witness from cross-examination, in order not to impede the progress of this trial, but reserve the right to recall him for further cross-examination at some future date, perhaps early this afternoon.

By president of the court:

Will you inform me as to the probable amount of testimony you would have to look over.

By assistant judge-advocate:

There are 30 pages of testimony here, sir, I would have to look over with care to see if there are any statements this witness made at that time which are inconsistent; and there is some other testimony I wish to look over. I think if the court would take a brief recess I could do it, but I think it would save time and trouble all around to excuse this witness now and he could come on the stand this afternoon, and during the recess, between 12 and 2, I shall read over this testimony, and in that way the progress of events will not be impeded at all.

By counsel:

May it please the court, I recognize myself as the offending member who was pointed at by the judge-advocate, and I respectfully request that his request for a little time now be granted and that we be made not to switch around any more in the introduction of our witnesses, and that he clean up this as far as he wants to at the present time.

By judge-advocate:

The courtesy of counsel is appreciated.

By president of the court:

The court will now take a recess to enable the judge-advocate to look over the testimony.

The court then took a recess until 11 o'clock a. m., at which hour the members of the court, the accused, his counsels, the witness, the reporter, and the judge-advocates resumed their seats.

The judge-advocate then addressed the court as follows:

For the information of the court, I would like to state that I have just been informed by counsel that he wants to recall Lieutenant Leckie, and Lieutenant Leckie has been summoned to Washington and has been directed by the department commander to leave the post not later than noon. Lieutenant Leckie is now preparing for his trip and will be here just as soon as he has prepared himself for his trip. In case we have not finished with the present witness, we will allow him to step outside, so that Lieutenant Leckie's testimony can be taken, in order that he can leave the post in compliance with directions of the department commander, and he will also appear in civilian clothes as he has to catch his train. General McCaskey has given him a positive order to leave the post not later than noon, so I told him I thought it would be all right for him to come before the court in civilian clothes.

Q. Corporal Madison, does the room in which you slept in C Company barracks—did that have a window in it that opened toward the north—that is, toward the town?—A. No, sir; it did not; it faced the officers' quarters.

Q. Did you get right up as soon as you were awakened by this shooting?—A. I did, sir.

Q. You got out of bed immediately, did you?—A. Yes, sir.

Q. How much clothing did you put on before you ran downstairs?—A. I put on my shoes and trousers, and after the call to arms was sounded I put on a belt.

Q. Your shoes and trousers were right there by your bunk, were they?—A. They were, sir.

Q. And you knew where they were and you had no trouble finding them in the dark?—A. Not very much; no, sir.

Q. Did you tie up—lace up—your shoes?—A. I did not, sir.

Q. Did you hurry as much as possible in dressing?—A. I did, sir; keeping low, sir.

Q. Did you put on any more clothing, a hat or blouse or anything else, before you went outside?—A. I put on a hat, a cap; at least a campaign hat.

Q. But you did not put on any coat?—A. I did not, sir.

Q. And just as soon as you heard this firing you jumped up hastily, pulled on your trousers and shoes, and did not stop to lace your shoes?—A. Did not lace them; no, sir.

Q. And then you heard call to arms just before you got on your belt or after you had it on?—A. When I heard the call to arms I put on my belt; I would not think of putting it on before, sir.

Q. But you hadn't left your room when you heard call to arms?—A. No, sir.

Q. Where did you first see Sergeant Brawner that night?—A. At the foot of the stairs coming upstairs.

Q. Was he apparently coming out of some room?—A. Coming out of the first sergeant's office; from toward that way.

Q. His bunk, however, was upstairs?—A. It was, sir.

Q. You stated that you heard the noise of some men apparently breaking open some of the gun racks. Now, when you came back from the wall that night did you stay at the company for half hour or so before the company was gotten up out on the line?

By associate counsel:

May it please the court, I object to that question, on the ground that it covers matter not included in his direct examination. The direct examination limits

him to a certain period of time there with respect to certain orders given by the commanding officer and his report on those orders. He is not a witness as to what occurred after that particular time.

Q. Where were these gun racks with reference to the head of the stairs?—A. They were on each side of the steps going up, on the right and left hand sides, two on each side.

Q. And in the main squad room, that was occupied, as you stated, by only two corporals and the privates; is that right?—A. The main squad room contains the same as these rooms separated off in each corner, you understand—it was the main dormitory just the same.

Lieut. HARRY G. LECKIE, Twenty-sixth Infantry, was recalled as a witness for the defense, reminded he was still under oath, and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE ACCUSED.

Q. Mr. Leckie, will you go to the plat, please. You testified as to one shot yesterday having struck the Garza house on the alley side. I wish you would show where that entered and where it came out of the house.—A. Entered on the outside of the house, about 18 inches from the corner of Fourteenth street and about 8 inches from the floor. It kept through to the front of the house and went out on Fourteenth street.

Q. In the general direction which you have just traced there?—A. In this general direction (indicating on map).

Q. Sit down, please. I asked that because I thought I had traced that yesterday and I could not find it in the record. Mr. Leckie, what is the color of the garrison wall at Fort Brown?—A. It is a dark gray, sir; a little darker than the gray on the roof there, the sheeting. Made of whitewash with lampblack put in it.

Q. Would you call it a lead color?—A. Yes, sir.

Q. Mr. Leckie, tell the court what kind of street lights they have there.—A. For street lights, sir, they use an oil light, a small lamp. The post the lamp is on is about 11 feet high and the light is the same wick we use in our quartermaster lantern.

Q. What kind of globe do they have, Mr. Leckie?—A. They have just an ordinary globe, and then this light is in a glass case; has four panes of glass around it. About 12 by 16, I should think, sir.

Q. How far does that light affect the street?—A. About 20 feet, sir.

(The judge-advocate declined to cross-examine the witness.)

Counsel for accused addressed the court as follows:

We have one other witness that has not reported as yet. We would rather like to have him appear before we go on with the rest we have to present. We will only have one witness then after this one, if we can get him. I want to be perfectly frank with the court in this matter; I don't want to ask an adjournment until to-morrow, but I want to say to the court that if an adjournment is taken we think perhaps this witness will appear. His testimony will be very short, but he was a sentinel on No. 3 post, and we have regarded the evidence of these sentinels on post as being exceptionally pertinent from a military standpoint, and we would like to have him if we can. After he is on we have one more witness, whom we don't want to commence to examine without finishing the examination. Now, we will promise this: If the court cares to

wait over until to-morrow we will put the witness on and go right through and close up, if that witness is not here, unless something unforeseen happens. We do not believe the court will lose any time doing this, because we, as counsel, will put in this time in preparing our argument to present to the court and, if we didn't have this time we should have to ask for it when we get through putting in all the evidence, so it is just as broad as it is long, and we will want sometime in order to curtail as much as possible our remarks at that time. Now, we await the pleasure of the court, and we will do whatever the court wishes in that matter.

By the judge-advocate:

We have no objection. I would simply say, sir, that if the court desires we can start in rebuttal, but that I think is hardly fair to the defense. We are prepared to go on with rebuttal testimony at once, but, as I remarked, I don't think it is fair to the defense——

By counsel:

And it is hardly fair to you, as things may come out you would want to rebut in the other. I don't think we will lose any time this way, Captain.

The court then, at 11.30 o'clock a. m., adjourned to meet at 10 o'clock a. m., Thursday, March 21, 1907.

CHAS. E. HAY, Jr.,
Captain, Acting Judge-Advocate, Judge-Advocate.

THE PENROSE COURT-MARTIAL—Continued.

PART 9.

MARCH 21, 22, AND 23, 1907.

WITH INDEX.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., March 21, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocates. The accused, his counsels, and the reporter were also sworn [present].

The reading of the proceedings of March 20 was dispensed with.

Maj. C. J. T. CLARKE, Twenty-sixth Infantry, a witness for the defense, was duly sworn and testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY THE ACCUSED.

Q. Major, will you tell the court whether you have known Major Penrose and how long you have known him?—A. I have known Major Penrose for more than thirty-one years. We were boys together, at the same school in Detroit, Mich.

Q. Was or was not your battalion sent to Fort Reno about November of last year?—A. My battalion was sent to Fort Reno in November, last year, arriving at Fort Reno on November 11, and it remained there until, I think, about the 29th of that same month, when it was returned to this station.

Q. Did you assume command of the post at that time?—A. My original order required that I assume command. I was sent there to be present during discharge of the members of the Twenty-fifth Infantry, of Companies C, B, and D. The orders, however, so far as assuming command were concerned, were changed by telegraphic instructions from the department commander, and I was simply ordered to remain there in camp until the discharge of these men from the companies.

Q. Then you did remain there during the discharge of the Twenty-fifth Infantry, Companies B, C, and D?—A. Yes, sir; during all the time.

Q. Tell the court what the conduct of these men was during that period—the members of that command that were discharged.—A. I observed these men very carefully. I was in the post daily; my duty required me to be there. I observed them when, after their rifles had been taken away from them, they were required to drill as companies without arms. I observed them about the post and in and about my own camp. Their conduct at all times was excellent.

Q. So they were drilled for some length of time without their arms, after their arms were taken away from them?—A. They were drilled every day until the muster out began, excepting during very bad weather. I paid especial attention to that fact, because I thought they were doing remarkably well.

Q. How would you describe the discipline of this command, these three companies?—A. I would describe it as excellent.

Q. How were they as to neatness and general soldierly bearing?—A. Very neat; very soldierly.

Q. Were there any actions of misbehavior after these men were discharged that came to your notice?—A. Not one.

Q. Did you take particular pains to look for that?—A. I did. Not only in and about the post, on the reservation, but I sent officers almost daily to the town of El Reno, 5 miles away, to find out if any men after they had been discharged were in the vicinity or in the town, and no disturbance of any kind was reported to me.

Q. Did you take the pains to investigate this with the civil officers of El Reno, the behavior of the men?—A. I did.

Q. And the result of that investigation?—A. Was they told me personally on at least four occasions, when I personally investigated the matter by inquiry, that they had no trouble; that they didn't know from the number of men on the streets that any of the Twenty-fifth Infantry had been discharged; no disorder at all reported from those men.

CROSS-EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Major, do you happen to know whether or not any men of this battalion of the Twenty-fifth Infantry, at or about the time you were there, broke the limits of the post to which they had been confined for some time?—A. Not so far as reported to me; not as far as I know.

Q. You knew nothing about this?—A. I don't know, and I don't think it happened while I was there.

THE ACCUSED, at his own request, was duly sworn as a witness, and testified as follows:

DIRECT EXAMINATION.

QUESTION BY THE JUDGE-ADVOCATE.

Q. Are you the accused in this case?—A. I am.

QUESTIONS BY THE ACCUSED.

Q. Major, how much service have you had?—A. It is twenty-two years last October, 31st of last October.

Q. What regiments have you served in?—A. I served in the Eleventh Infantry from second lieutenant to a captaincy and some time after I received my captaincy with the Eleventh Infantry. I was transferred to the Twenty-third Infantry and served with that for two years. At least I was with it very little of that time. I was transferred to the Twenty-eighth Infantry and joined it in the Philippine Islands and was on active duty with it only six months, I think, when I was taken ill and sent back to the United States. I was transferred from the Twenty-third to the Twenty-eighth.

Q. Now, what special services have you performed in connection with your regiment? Ever on any staff duties?—A. Not with the Eleventh Infantry—that is, regular staff duty. I have frequently been quartermaster, commissary, and adjutant of posts; with the Twenty-eighth Infantry I was regimental quartermaster. While I was still in the Eleventh Infantry I attended the Infantry and Cavalry School from 1889 to 1891. I was instructor in law for the following two years and secretary of the school for two years following that.

Q. When were you promoted to the Twenty-fifth Infantry, about?—A. It was in May. I received my promotion, however, before that—on the 15th of October, 1903. I joined it the latter part of May, 1904, the Twenty-fifth Infantry.

Q. And you served with the battalion continuously from that time on?—A. With the exception of a short leave, one of a month and a few hunting leaves, two or three days at a time.

Q. Now, Major, how does the discipline and soldierly conduct of this battalion which you commanded compare with that of other regiments in which you had served?—A. With all due modesty I wish to say I considered it the best drilled and the best disciplined battalion I have ever seen in the Army.

Q. What was its conduct after August 13 up to the time it was discharged by you in November last?—A. I considered the battalion was acting remarkably under the circumstances. We had no trouble with them whatever at Brownsville, and after we went to Fort Reno the men were confined to the limits of the post. They were not allowed any privileges whatever; they were given extra drill, extra guard, and they were given fatigue all the balance of the time. This was constant. The men did this work cheerfully and willingly. I think there was five men during the time when we arrived at Fort Reno and they were discharged that disobeyed this order and went to town. At least five, I think it is, were the only ones we knew anything about. They went to town in violation of this order; were apprehended in it, tried by court-martial, and all were punished by a dishonorable discharge and six months' confinement in the guardhouse.

Q. What was the conduct of these men during the period they were being discharged? Did you take any pains to notice this?—A. Yes, sir; I was with them every day during the time they were discharged. There was but half a company a day discharged. I was in the room all the time. I observed the men afterwards, as they were leaving the post, and many came up to say good-by to me. I was in constant communication with the police department in the city of El Reno and always with the chief of police at least once a day. He never reported a man for any misbehavior of any kind; told me after it was all over that there was not a single man arrested for drunkenness or any misconduct. In fact, he would hardly have known the men were being discharged during this period.

Q. When did you arrive at Brownsville with your battalion and how long did you serve there? Fort Brown, Tex., I mean.—A. We arrived there on the 28th of July, late in the afternoon. I think my official dispatch of my arrival was dated 3.05, and we left on the 25th of August, at half past 6 o'clock in the morning.

Q. Were you in the city of Brownsville during this service? If so, tell the court generally, commencing with the day you arrived.—A. Yes, sir; I was in the city, but very seldom. The evening of the 13th——

Q. Go back first to the date of your arrival. Didn't you take your meals at that time downtown?—A. Yes, sir.

Q. Where and for how long a time?—A. We took our meals at the hotel, the Miller House. The evening we arrived I took supper there with my wife. I think we took our meals there the following day, and I think the morning following that we took breakfast, and then we started our own housekeeping.

Q. Did you go into the city frequently after that?—A. Very seldom.

Q. Did you make any calls upon people there; if so, whom, socially?—A. The only call I made was upon Capt. William Kelly. I went up in company with Captain Macklin one evening, possibly five or six days after we arrived. I don't know the date, and returned the call Captain Kelly had made on me. I was in the city only on two other occasions, except to drive through it. I remember driving through the city just for a drive on three different evenings.

Q. Were certain events—known, for instance, as the Tate-Newton, Clifford-Adair, Baker-Reid, and the Evans incident—reported to you?—A. They were, sir.

Q. Give the court the history of the Tate-Newton affair as it came to you officially.—A. It was reported first to me by Captain Macklin. I think he stated that the incident occurred on the 5th of August—the evening of the 5th of August. I told him to make a thorough investigation of the matter and to let me know the results. Later he submitted a letter and the affidavit of Newton and a man named Lipscomb, who was with him at the time.

Q. Have you those affidavits?—A. I have, sir, and the letter. I wish to state I investigated this matter myself before this report of Captain Macklin's was handed to me.

Q. You had investigated it yourself?—A. I did; yes, sir.

Q. What was the result of your investigation?—A. I called, first, Private Newton into the office. I sent for him and I told him the captain had reported this matter to me and I wanted him to tell me all about it. He said about 9 o'clock, I think it was, he was walking up Elizabeth street, somewheres beyond the post-office, and he met a party of ladies and a gentleman on the sidewalk; that he stepped on the inner side of the sidewalk to pass these ladies, and Lipscomb fell in behind him; that immediately after he had passed these ladies and was opposite this man he pulled a revolver from his pocket and struck him over the head, knocking him down. I then questioned him closely as to how he passed these ladies, whether or not he brushed against any of them or whether he was rude in any way, whether he went in between them. He declared he passed on the inside, where there was plenty of room; that he hadn't touched one of these ladies and had not spoken to them or anything of the sort. I told him if he had been rude to these ladies, while I couldn't approve the method this man had taken, still almost any man might have acted in a similar way under similar circumstances, but that I should investigate the matter thoroughly, and if I found he was in the right I would do everything I could about the matter. If, on the other hand, I found he was wrong I should certainly prefer charges against him that would send him before a general court. The man was very positive in his statements, perfectly cool and collected when he was talking to me. He had all the appearances of being honest and sincere in the matter.

Q. You said that Captain Macklin made a report?—A. Yes, sir.

Q. Do you know about when that report was made?—A. Yes, sir.

Q. I will ask you to see if that is the report (handing witness paper).—A. Yes, sir; that is the report.

Q. I will also ask you to examine the appendices to that report and tell the court what they are.—A. The first is an affidavit signed

"James W. Newton, private, Company C, Twenty-fifth Infantry," sworn to before Samuel P. Lyon, captain, Twenty-fifth Infantry, summary court. The second is an affidavit signed "Frank J. Lipscomb, private, Company C, Twenty-fifth Infantry," and signed by Samuel P. Lyon, captain, Twenty-fifth Infantry, summary court. They were executed both on the 11th day of August, 1906. If you will permit me, I would like to go on further and state to the court that I also examined Lipscomb, who was with Newton, and he corroborated his story absolutely.

(Associate counsel then read to the court the report of Captain Macklin and two above-mentioned affidavits, all of which are hereto appended and marked, respectively, ——.)

Q. I will ask you to examine this and tell the court what it is exactly.—A. This is a carbon copy of a letter that I addressed to Mr. J. W. Bann. I thought that was the name of the collector of customs at that time—his name is Vann. It is not signed.

(Associate counsel then read said letter to the court, and it is hereto appended and marked ——.)

Q. I will ask you to examine this paper and tell the court what it is.—A. This is a communication from Mr. A. A. Brown, deputy collector of customs, of Brownsville, Tex.

Q. Received by you, was it?—A. Yes, sir; received by me in response to the letter that has just been read.

(Associate counsel then read letter to the court, which is hereto appended and marked ——.)

(Counsel here handed witness another paper.)

A. This is a communication from Mr. J. W. Vann, collector of customs, Brownsville, Tex., addressed to me.

(Associate counsel then read said letter to the court, and it is hereto appended and marked ——.)

Q. Do you remember when you received that reply from Mr. Brown—when and how?—A. The reply from Mr. Brown came by mail, and it was on the evening of the 13th of August. We received our mail there in the evening only, probably about 7 o'clock—7 or 8 o'clock, I don't remember the exact time.

Q. So you did not receive this letter from Mr. Brown, requesting you to await the return of Mr. Vann, until 7 or 8 o'clock that evening, in the regular course of mail?—A. Yes, sir.

Q. You never took this matter up further with Mr. Vann, did you?—A. I did not, sir. I reported the whole instance to Major Blocksom, the assistant inspector-general of the Southwestern Division, when he arrived, and gave him copies of all the papers.

Q. Do you remember what there was of the Clifford-Adair matter? Oh, before we go on from that, did you get any further report from Captain Macklin about this Tate-Newton affair?—A. That is the report I received, sir.

Q. Any further verbal report you recall now?—A. Yes, sir; he spoke to me about the matter. He said he had examined this man Newton very carefully, and Lipscomb; that they were perfectly sober; that Lipscomb seemed to be very earnest in the matter, and he seemed to be aggrieved that a man should be so mistreated in the city of Brownsville. Something of that nature; that's the purport of it. Of course I can't remember the exact words of the conversation, as it occurred several months ago.

Q. Take up the Clifford-Adair matter. Tell the court what you know about that.—A. I understand Captain Macklin—I don't recall whether he reported that to me when I was in my office or outside simply on the street—that Adair had been returning from Matamoros, and on returning to the American side he had been searched by the inspector and a small souvenir pen, which he paid 50 cents for, was taken from him, the man saying that he didn't propose to have any nigger smuggle on him and that he would report him to his company commander. I told Captain Macklin to make an investigation of the matter as clearly as he could and report to me.

Q. Was any other report made of the matter?—A. I think not. That happened on the evening of the 11th, and I think there was nothing further about it.

Q. So that when you directed the company commander to investigate the matter you dismissed it from your mind?—A. I didn't think anything further about it.

Q. What do you know about the Baker-Reid matter?—A. That was reported by Captain Macklin also, and I think in my office. He told me that Reid, in company with Corporal Madison, and I think there was a third man, were returning from Matamoros, and when they reached the American side there was some discussion between the boatman and Reid about the payment for the passage. That Corporal Madison told the man he had better pay it and come along to the post, but he persisted in arguing with this boatman, and the collector of customs, or whoever it was there, came up to him and told him to stop his noise, and when he didn't do it he pushed him off into the backwater and mud of the Rio Grande River. He told me he thought the man was simply drunk and there was nothing in it. I told him, however, to investigate that matter.

Q. When was that, do you recall?—A. I think that was the night of the 11th, sir; 11th of August.

Q. Was it reported to you that night or the next morning?—A. Oh, no, sir; I don't think I heard of that. I think it must have been the next morning. It may have been the 13th. I don't remember.

Q. Tell the court how you heard about the Evans affair, when you heard about it, and all about it.—A. I think it was about half past 5 o'clock on the evening of the 13th. I had just finished dressing for dinner and was on my way over to the post exchange. Now, the post exchange is not shown there, but to make this clear, if you have no objection, I would like to go to the map. The post exchange is located in here (indicating point south of the guardhouse and between the guardhouse and the road passing in front of the officers' quarters). There is quite a deep ditch on this side of the road and on the other; there is a bridge crosses over each one of these. As I say, I was on my way to the post exchange, and I was stopped by some one calling me; I looked around, and it was Doctor Combe and a gentleman whom I had never met before. The Doctor said: "Major, I would like to speak to you," and I waited right by this little bridge along here (indicating a point just west of where the road from the officers' quarters turns to go to the hospital). I waited. Doctor Combe came on and left the carriage, followed by this gentleman, to whom he introduced me as Mr. Evans, and he told me that Mr. Evans had a complaint to make to me. Mr. Evans then told me that the night before, about 9 o'clock, that

his wife had been assaulted by a colored man whom she was positive was a negro soldier. As I recall it, he said he and his wife were returning from the train, and they met a friend of theirs, who was riding Mrs. Evans's pony, and this friend insisted on Mrs. Evans getting on her own pony and riding home; so he assisted her to mount, and she went on ahead, and Mr. Evans with this other man—I presume he mentioned his name; I don't recall it—they walked on slowly behind. He said his wife went home, entered their house, or the back gate—she had dismounted—opened the gate, and that when she was near the steps and near an ash can or an ash barrel she was seized by a man from behind by her hair and was thrown violently to the ground, and that she screamed and that the man then fled. They told me, too, that there was a man and woman living in this same house with them, and this man happened to be in the bath tub when Mrs. Evans screamed, and that he got out as soon as he could. He said Mrs. Evans told him he was a large negro, tall, wearing a slouch hat, blue shirt, and khaki trousers. I asked him right away if he hadn't any better description than that, because I had many large dark men, heavy men, in my command, any one of whom might answer that particular description. And he said no; his wife was so frightened that was all she was able to observe. I asked him then why he had not reported to me before—it was then twenty hours, I think, after it happened—and he stated his wife was in such a nervous condition, hysterical condition, that he had been afraid to leave her; she would not let him leave her. I asked him then if he couldn't, after his wife became calmer, try to get her to recall some distinguishing feature about this man, anything to identify him; that I felt very very sorry about the matter, but that I couldn't think it was one of my men who did the thing. These men had never before in the history molested a woman in any way, shape, or form, and it was particularly unnecessary in Brownsville. He said his wife was sure it was a negro soldier; and I asked him particularly if he could not get her to remember something that would further identify the man. I further told him, if his wife would do so, I would take every man that answered that description in my command—she could come up to my office, and I would call each man in individually, and she could see if she could recognize him. She said she would not be able to do so; she only had a glimpse of him. He then went on to say that for the last two nights he had been very much troubled by soldiers congregating near his house, on the corner of his house, with their swearing and obscene language, and on one of these evenings he went out to them, and he said: "I spoke to them very nicely; I said, 'Boys, I wish you would go away from here; there are ladies in the house, and this is not nice language for them.'" And he said: "One replied, 'You come out and make us go away.'" I said: "Mr. Evans, that is something you should have reported to me right away; it is something I can handle." I said, "It shan't happen again, for, if necessary, I will put a guard there." He said there would be no necessity for that; he would have to move away, could not stay there any longer. That is the substance of everything that took place between Mr. Evans and myself. Then Mayor Combe said to me: "Major, I would like to speak to you privately." We walked upon this path

to the hospital probably 20 feet; Mr. Evans returned to the hack (indicating that hack was back in road passing in front of officers' quarters and west of the bridge or at point first indicated, and that they passed toward hospital—in direction of hospital). We walked over there, and Mr. Evans got into the hack, and Doctor Combe said to me: "Major, don't you think it best for you to keep your men in the post to-night?" I wish to impress that on the court. "For I am afraid this may cause a great deal of trouble." I think that is his exact words, as near as I can remember. I said: "Doctor, I have already made up my mind as to that. I would rather anything in the world would have happened than this very thing, and, while I don't think it was one of my soldiers, still they will undoubtedly have the blame for it. I shall keep them out of town, and I shall send out and have them all brought in before dark." He thanked me very much, said, "Good-by," and returned to the carriage, and the two gentlemen drove out of the post.

Q. Had you heard from any source anything about this Evans affair previous to this conversation where Mr. Evans himself reported it?—A. I had not.

Q. You are positive about that?—A. Absolutely positive. There was nothing of any kind ever came to me before Mr. Evans said so.

Q. Did you give any orders about it; and if so, when? Tell the court what action you took.—A. I then went into the post exchange to look for the officer of the day—Captain Macklin was officer of the day, and also exchange officer. He was not in the exchange, and I called over to No. 1 at the guardhouse and asked if the officer of the day was there; he said he was not. I then walked right down the line and I found Captain Macklin seated on the east side of his house—his house is No. 11. When he saw me coming he got up, came over to me, and I told him of this report that had just been made to me and that I wanted him to send at least three patrols into town, that all passes would be canceled at 8 o'clock. I wanted every man in the post at 8 o'clock, and none would be allowed to leave. I wanted these three patrols sent into town to warn all the men, and if any refused to come in I wanted him to arrest them and bring them in, and he might publish that order to his company, as it would be published at retreat, namely, that all men must be in by 8 o'clock, and that none would be permitted out of the post that night.

Q. Did you take steps to have this order repeated—given to the command? If so, what were they?—A. I did.

Q. How?—A. I looked for the adjutant, Lieutenant Grier—acting adjutant. I didn't find him at his house, but I left word for him to report to me as soon as he returned. Lieutenant Grier came in very soon after that, came down to my house, and I told him I wanted the order published to the companies—that all passes were revoked at 8 o'clock and that no man would be allowed to leave the post under any circumstances after that hour. I told him, too, that I had ordered patrols sent out into town to collect the men.

Q. Did you personally assure yourself at any time after that as to your orders having been obeyed—carried out?—A. Not as to whether or not they were published to the companies. I took that, of course, as a matter of fact that it would be done. The officer of the day reported to me later in the evening—I think it was probably 9 o'clock; I don't remember—that the patrols had been out, or one or

two of them—I don't recall that—but that all the men had come into the post that they had found, and that the last patrol had found no one at all in the town. He told me that he himself had been out through the town, and that he had gone around at places where soldiers would naturally congregate and he hadn't seen a man.

Q. Oh, going back to that interview with Mayor Combe. Was the suggestion about keeping the men in the post made in the presence of Mr. Evans?—A. It was not.

Q. You are positive of that?—A. I am positive there was nothing of the kind said in Mr. Evans's presence.

Q. And you are positive that you did not say or intimate to Mr. Evans that you had heard of it before?—A. Absolutely. I had not heard of it before.

Q. Were these all the incidents that were brought to your attention that occurred between members of your command and the people of the town of Brownsville?—A. Yes, sir; I think that was all at that time.

Q. Did you, as a result of any of these incidents, note or have called to your attention in any way any feeling of resentment on the part of any or all of your men toward the citizens of Brownsville?—A. Not in the least. As far as I knew the relations were of the best. I attached no importance to the Tate affair at all.

Q. You considered that under investigation, did you not?—A. That was under investigation, and the man, as I say, was perfectly cool and collected when he was talking to me. He manifested no intention of resentment at all, and he had always been considered a very good man; I knew that.

Q. What inflamed feeling or feeling of resentment did you have information of, or suspect, on the part of the citizens of Brownsville toward your command up to and including August 13 as a result of any or all of the foregoing incidents?—A. None whatever. On the contrary, the reports I had received led me to believe that there was very little feeling about them. I had heard through company commanders that the men were doing exceedingly well in town; they were all pleased about it. I had taken occasion to speak to Mayor Combe, as being mayor of the town and in charge of the police, of the conduct of the men on several occasions, probably three or four, as he was then attending the sick in the post, and came in every morning; I saw him, I think, every day, almost. I recall particularly, either the night of the 11th or 12th, when he called at my house, of his being loud in the praise of the conduct of the men after pay day. I fix this date, because we were talking about pay day—I think it was the 11th or the 12th—and he said he had never, in Brownsville, known such a pay day or known it to go off so well. He repeated the thing several times to both my wife and myself, and talked about it.

Q. In this connection I want to call your attention, Major, to the letter which has been introduced in evidence and which is your report dated August 15, 1906, and addressed to the military secretary. I quote, on page 32: "That the enlisted men have been subjected to indignities since their arrival here there can be no doubt, and this has caused a great deal of feeling among them, and to one case I attribute this outbreak, the subject of which I will make an official report as soon as the collector of customs, Mr. Vann, returns to this city." You then go on to recite the Tate-Newton affair, outlining

just what you have stated here, and you go on and state further—well, I want to ask you first, why do you state on the 15th that this has caused a good deal of feeling among the men when you stated here before the court that up to the 13th there had been no feeling brought to your attention or was manifested in any way?—A. The little that was brought out was in the investigation that followed immediately on the morning of the 14th—the 14th and 15th—that letter was written about midnight on the 15th. In questioning these men I questioned a good many myself—for instance, all the guard and several noncommissioned officers—and of the privates I questioned myself at that time two of the men told me that one of them had gone into a drug store to get something to allay the irritation from a mosquito bite, and they told him they had nothing to sell him. Another, I think, went in for some writing paper, and they told him they didn't have any to sell, although there was plenty there, and there was several of the men told me the people on the street would look at them in rather a disgusted manner when they passed them. That was what I intended, and the Newton affair, I wish to say most emphatically, I didn't consider anything of that at all; if I had, it would have been in regard to the customs officials, not to the people of Brownsville themselves.

Q. Your statement then, as I understand you, was based on after events rather than before this time; as you looked at it after the 14th?—A. Yes, sir.

Q. And at that time you had presented to your the evidence of the shells and the statement of the committee?—A. At the time that letter was written; yes, sir.

Q. Did you personally know of an inflamed feeling on the part of the citizens of Brownsville toward your command, as a result of the Evans incident, previous to the occurrences of the night of August 13–14?—A. Not at all; I never heard anything about it, anything connected with it until, as I state, about half past 5 on the afternoon of the 13th.

Q. As I understand you, your information up to that time was that the feeling was just the reverse of that of resentment?—A. Absolutely to the reverse; I had nothing to the contrary. Nothing had come to me except the information I have given you, that the men were doing remarkably well.

Q. In this connection I wish you would tell the court any customs or incidents you noted in connection with your duties there, your living in Brownsville, that led you to formulate a positive opinion as to what this feeling was or whether there was any feeling or not. Any incidents, for instance, about people coming to the post or anything of that sort.—A. There were a great many visitors in the post daily. It was a custom for the people to come into the post always in the evening, early in the evening; I think they would generally commence to come in a little before sunset, a little before retreat, and they would promenade up there for some time, and on moonlight nights it was not infrequent for them to be in there as late as 10 or 11 o'clock. A great many came in there, men, women, and children, and a great many people used to come in between B and C Company barracks, a little farther on the parade, to witness retreat; that was almost a nightly custom—I remember seeing them there a great many

times. This lagoon, that has been spoken of, in the rear of the quarters, was the source of a great deal of amusement to the people. I don't recall a day that men and boys were not fishing there off a little dock in rear of Captain Macklin's quarters and the boys and men would go farther around the lagoon and go in swimming. I often saw them, and more frequently heard them than that. Another thing was the matter of baseball. We had a diamond in the east end of the post and boys and young men were in there I think every afternoon; I can't recall an afternoon that I didn't see boys in there playing baseball.

Q. Did you notice any difference on this date, or did you recall any differences in the actions of the people on the 13th?—A. Not at all; in fact when I called it to mind the next day, there were the usual number parading in there, walking up and down that evening, and I recall particularly the boys playing baseball, and I noted the people watching parade that night—I don't mean parade, retreat roll call.

Q. So in so far as any outward appearances came to you, as post commander, the attitude of the people of Brownsville was normal; is that what I understand you to say?—A. Absolutely. I know nothing that was any different in any way.

The court then took a recess until 11.10 o'clock a. m., at which hour the members of the court, the accused (as witness), the reporter, and the judge-advocates resumed their seats.

Q. Major, I want you to tell this court what you had in mind when you gave those orders to keep your men in. What actuated you; what was your purpose?—A. I thought that naturally the assault on Mrs. Evans would probably cause a great deal of feeling in the town, as it naturally would anywhere, and my object in keeping the men out of town was to protect them—was for their protection—because I feared if they went in singly or in small bodies they would certainly come to harm.

Q. Then your prime purpose was the protection of your command?—A. It was, sir.

Q. That is, whether this report was true or not?—A. Whether it was true or not; I realized the effect in town was going to be the same whether it was true or not.

Q. Now, then, let's take up the events of that night.—A. From the time of the shooting you mean, sir?

Q. No. There was nothing unusual that occurred up to about midnight that night, was there?—A. No, sir; there was nothing unusual at all. I was on the porch with my wife most of the evening—all of the evening, I think. I think Lieutenant Grier and his wife called that evening, but I was very much perturbed over this report, because I felt there was a good deal of trouble ahead simply because, whether this report was true or not, it would be believed in town, and I was wondering, if it could possibly be a soldier, what means I would take to identify him; the report was so vague, and it seemed to me I was up against something I could not solve.

Q. What time did you go to bed, Major?—A. I think about half past 11.

Q. Had you gone to sleep at all when this shooting occurred?—

A. No, sir; I had not gone to sleep. I had spoken to my wife; been lying there talking, and had spoken to her only a moment before.

Q. What was the first thing you heard?—A. Two shots.

Q. Where were they?—A. Fired very close together. I thought they were between the guardhouse and that vacant set of quarters, farther over; it occurred to me that was the general direction.

Q. Farther over? What do you mean?—A. I mean farther over in the part of town in here. Might have been in here anywhere. I was sleeping in the back room in this set of quarters (indicating on map).

Q. Is that what is known as the "Tenderloin district?"—A. In that vicinity; I was told so.

Q. You don't know personally?—A. I was never in that part of town while I was in Brownsville.

Q. What did you take those shots to be?—A. I took them to be pistol shots and firing black powder.

Q. What followed these?—A. That was followed almost immediately by six or seven shots; they were fired very rapidly, and I thought they were directly in rear of C Company, in that vicinity; back in that vicinity.

Q. What did you take those to be, Major?—A. They were undoubtedly high-power guns.

Q. You thought they were high-power guns?—A. Yes, sir; I thought that they were guns shooting smokeless powder, not black powder.

Q. What followed that?—A. That was followed by three very distinct shots. They stand out in my memory now more distinct than any others, and that was followed by a number of shots—a number of shots fired irregularly at first. In other words, they did not sound like volleys at first.

Q. Tell us a little more about those three shots that stood out so distinctly; where did you locate these?—A. In that general direction, I could not tell.

Q. Did they appear different from the others?—A. They were louder than the others and appeared more distinct.

Q. They were high-power guns?—A. Unquestionably.

Q. You said they were in that general direction; what do you mean by that?—A. I mean in that general direction of the town.

Q. Toward what?—A. I took it to be in rear of B Company, over in that direction, or possibly—C Company, I mean, or the east end of B Company.

Q. You located it somewhere near B or C Company?—A. In that part, in that particular——

Q. Let's commence with your movements, Major; what did you do?—A. The instant I heard these two shots I sprang from my bed. I thought it might possibly be fire, and my wife said to me, "What's that; fire?" and just instantly after that these several shots came, and I said, "I am afraid it is something worse than fire," and I sprang into my clothes—put on a pair of trousers over my pajamas; I slipped my bare feet into my shoes, did not lace them at all; I grabbed my blouse, ran downstairs as fast as I could, and picked up my hat and pistol in the hall as I rushed through.

Q. What's your custom with regard to your glasses, Major? Tell the court about that before you go further.—A. I always keep my

glasses on a table or chair on the side of my bed. I put them on as regularly as I get up.

Q. Do this in a mechanical sort of a way?—A. Yes, sir; I think it is mechanical after wearing them for about thirty years.

Q. What did you say the last? When I interrupted you you grabbed your pistol——A. I first started out of the door, and just as I had my hand on the door there was a knock, and as I opened the door I almost ran into a man who said to me, "Major, they are shooting up the post; they are shooting up the post."

Q. Who was this?—A. I did not know at that time. I found out next day it was Private Hairston, who was sentinel around No. 3. No. 3 extends completely around the officers' quarters at night, keeping them on his left, and, as I stated, he said, "They are shooting us up." I said, "Go over to the guardhouse and tell the sergeant of the guard to sound call to arms." I ran as hard as I could over to C Company, calling out several times, "Sound call to arms."

Q. Was call to arms sounded?—A. Call to arms was sounded.

Q. Before or after you had yelled this out?—A. Not until I had yelled it—I suppose had called four, five, or six times; I don't know.

Q. And where was it sounded first?—A. It was sounded from the guardhouse.

Q. Do you recall whether it was taken up by other trumpeters?—A. It was taken up, I think, almost immediately by, I think, all the trumpeters in the post; it sounded all along the line.

Q. What was in your mind at this time, Major?—A. My mind was completely filled with the Evans affair then. I thought that a body of men to revenge Mrs. Evans had come up to shoot into the post.

Q. Did anything happen before you got over to C Company, toward which you were going?—A. As I went on, after call to arms sounded, I called, "Fall in the companies! Fall in the companies!" I must have repeated that several times, until I arrived at C Company.

Q. What did you find when you got over there?—A. When I got over in the front of C Company there were probably, oh, fifteen men that had assembled in front of the company. Most of them, I think, were in their underclothing only; I could see them all in white and they had no arms. I said to them right away, "Men, where are your arms? Why do you fall in without your arms?" One of them replied, "The gun racks are locked, and we can't find the noncommissioned officer in charge of quarters." I said: "If you can't find the noncommissioned officer in charge of quarters, break the racks open and fall out under arms just as quickly as you can." The firing at this time was continued and very rapid; there was a great deal of it.

Q. What did you note in front of B Company, if anything?—A. You wish me to go on with the narrative?

Q. Yes. Had you heard anything as you went across the parade ground previous to getting to the company? If so, what?—A. No, sir; I had not heard anything at all that I can recall, excepting the sound of trumpets.

Q. Hadn't you heard a wagon moving somewhere?—A. Oh, yes; I had heard that; I had heard the scavenger's cart; that is one of those metal carts; makes a great deal of noise, and I could hear that in the direction of the western end of the parade.

Q. Where were you when you heard this?—A. I don't know;

crossing the parade ground somewhere; might have been in the middle, or near one side or the other; it was before I arrived at C Company that I heard this cart.

Q. Now, if you will take up the narrative, please.—A. After telling these men to break open the gun racks if they couldn't find them in any other way I went over to B Company, and I think it was right between the interval of B and C Company that I met a man who told me he was the sentinel on No. 2, and I asked him where this firing was, and he said to me, "It's directly over the wall." I asked him if he had seen anybody who was doing it, and he said he hadn't seen anybody and he didn't know. I said all right, and I passed on to B Company. B Company had a few men out, and I noticed a man in front of it whom I took to be a noncommissioned officer, and it was Corporal Daniels, and I told him to form the company as quickly as he could. I then went back to C Company and some of the men were coming down with their arms; most of them, I think, had very little clothing on; I could see many and noticed the white shirts.

Q. Did anybody report to you about this time?—A. Some of these men were coming down, as I say, with their rifles. I was very close to them—it was very dark—I don't suppose I was 3 feet from them, and some threw their rifles down and commenced to load them. I told them to stop that; that I would shoot any man who loaded his rifle before given an order to do so.

Q. Did any man of your command report to you about this period?—A. No, sir.

Q. Go ahead.—A. Sergeant Harley, I noticed him in front of the company, and I told him to take command of the company and hurry them up, get them together with their arms, and to send some one for Captain Macklin. I then went over to B Company, and when I got near the company I could hear Sergeant Sanders, who was there calling the roll or telling the men to fall in, I don't know which; I heard his voice distinctly. While I was standing there I heard Lieutenant Grier calling, "Major, where are you? Major, where are you?" I said, "Grier, come over to C Company." I went right over to C Company, and Grier came over, and I told him to take command of C Company; that Captain Macklin was not there; I had not seen him, and I felt a little uneasy about it, and Grier asked me what was the matter, and I said, "They are shooting the post up," and for him to form the company as quickly as he could, and I would give him orders later what to do. I think it was at that time that Sergeant-Major Taliaferro reported to me, and he asked me if he could arm himself; he had no arms. I told him yes, to go and get what he wanted. I went back to B Company, and on the way back—there is quite a little space, may I call the attention of the court, between the barracks and this brick wall, quite a little space in here. The men form in between this wall generally and the barracks, and there are some trees along in here, too (indicating space in front of quarters between brick walk and the quarters themselves). When I was going over there I saw some forms right on this walk. I called out, asked who that was, and the reply I received was it was the corporal of the guard. I went over, asked him what his name was; he said it was Corporal Burdett, and I asked him what he knew, what he had seen—any men or not—

and he said he hadn't seen a thing; he had been waiting at the guardhouse and was sent by the commander of the guard to look for No. 2; and I told him I had seen No. 2, and he was all right, and for him to remain where he was. I went down to B Company and found Lieutenant Lawrason had joined at that time. I told Lawrason that as soon as his company was formed I wished him to post it in line of skirmishers along the brick wall, his left resting at the main gate, and he would be joined on his right by C Company. I started to go back to C Company then, and I thought of this Corporal Burdett with two or three men he had with him, and I realized the ladies were all alone, and I sent him over to Captain Lyon's house and told him to look after the ladies, to see that no harm came to them. I went back to C Company and told Lieutenant Grier that as soon as his company was formed I wished him to take it and place it along the brick wall, his left resting on B Company's right, and to extend it well along beyond the wall and turn it back a little toward the guardhouse.

Q. You stated you had sent for Captain Macklin; do you remember who you sent?—A. No; I just told Sergeant Harley to send some one for Captain Macklin, didn't name any one man at all. I went back and called to Captain Lyon and asked him if he was ready; Captain Lyon came over to me and said he was ready, and I told him to place his company along the brick wall with his right resting at the main gate and extending toward the Rio Grande River. I followed Captain Lyon out—his company was formed and he started at once—I went with him to the gate, and directly after this B Company came out and formed, and I think it was then the sergeant-major reported to me. I noticed he had a rifle, and as I had heard nothing from Captain Macklin yet I told him to go over to Captain Macklin's quarters and see if he could find him. Immediately after that I went along the entire line, as formed, from the gate east, to see whether these young men had posted the men the way I wanted them. They had them in line of skirmishers along the road, and C Company was extended someway along the vacant quarters and the right of it was defused a little.

Q. Will you describe the firing more particularly? You had gotten to the point of, I think, scattered fire.—A. This firing continued until just before the companies were formed and put out along the wall; it ceased just about that time. There had been a good deal of it. Some of the shooting sounded as if it might have been an attempt at volleys, I think two or three of these, maybe three or four, I didn't keep track of them, and they had gradually receded, gone away; gone up town as I supposed, and I think most all of this firing was from high-power rifles. I don't think there was any black powder in it at all; I think I can distinguish between black powder and the nitro powder used in the high-power rifles, but I did notice pistol shots every now and then during all of this firing. I recognized them as pistol shots, simply as they did not make as much noise as the others.

Q. Now, you have gotten the companies formed; they remained there for some time?—A. I would like to go on a little further, if you please, I have not quite finished that. As I say, I went along the line to the extreme right and coming back I met the sergeant of the

Q. Tell the court what Doctor or Maj. Fred Combe told you.—A. I met them right at the gate. Dr. Fred Combe introduced me to his brother, Dr. Joe Combe, the first time I had ever met him at all, and we stepped up, I suppose, halfway between the gate and the line of barracks. He said to me, "Major, one man has been killed." I understood him to say, "The chief of police has been wounded and his horse killed, and it has been done by your men." I said, "Doctor, I can't believe it." He says, "Yes; they have been seen by several people; there was a party of five in one and a party of three in another." I said, "I can't believe it, Doctor. I have had a roll call, and the men are all present; every intimation I have seems the other way—coming the other way." He says, "It isn't so; our men have seen it." I think Captain Lyon was standing with us during this conversation, and he then asked me—well, there was a good deal of this sort of conversation—and he then asked me if he could speak privately to me, and we stepped off to one side, and he said then, "Major, you must keep your people in the post, because I would not be responsible for any man that leaves the post now." I said, "Doctor, I shall certainly keep my men in the post, and I shall certainly keep the Brownsville people out of the post; no one shall be allowed to leave this post except on my order, and none shall be allowed to enter the post except it is yourself or on your personal application. If you wish to see me and will send a note, I will have the guard at the gate admit you, but under no circumstances will anybody be admitted until this matter is thoroughly investigated." He talked a little longer—I have just given you the purport, as near as I can remember it—and then he and his brother went out.

Q. In connection with this keeping your men in, did you go into that more in detail in regard to the officers or not?—A. Yes; I did. I remembered that Lieutenant Lawrason was taking his meals at Mrs. Leahy's hotel, and I said, "Well, Doctor, do you think it would be advisable for Lieutenant Lawrason to go outside for his meals?" He says, "No; I don't. I think you had better keep them all in." I said, "All right; the officers shan't go." I forgot to mention one thing in there. He told me he had just headed off a crowd of about 300 that were bent upon coming down there in the post, and he told them it would be simply suicidal to do it.

Q. Did he say anything about whether these 300 were armed or not?—A. Yes; I think he said a body of 300 armed men, but that he had succeeded in heading them off.

Q. What orders did you give, Major, if any, at the time he told you your men did it, in regard to your command?—A. I turned around immediately and told the officers to verify their companies.

Q. Had any of the officers reported at about this time or previous to this time?—A. About this time—at all events it was previous to the time the roll was called—Captain Macklin reported to me. He came up and reported, and I said, "Well, Captain, I am mighty glad to see you." I probably called him Ed. I have known him all his life. He said, "I have not heard a word of this; I have been sound asleep;" and I said, "Very well, take command of your company at once." I told him it was on the right of the line.

Q. You said you directed your officers to verify their companies. Was this done, and what was the result?—A. I received the same

might happen. I didn't want them to light any lamps in the barracks, and to try to attempt to inspect their rifles by a lantern is a very unsatisfactory process at best.

Q. Then you were still under the impression the post was being fired into from the town?—A. I was. I had nothing else to make me think otherwise. All the reports I had received said the shots came from that side.

Q. Except the report of Mayor Combe?—A. Except the report of Mayor Combe.

Q. When did you next see Mayor Combe?—A. I think it was about 9 o'clock or possibly half past 9 o'clock next morning—morning of the 14th.

Q. What did you do then yourself, Major, after you had given these orders to the command? Please state first did you leave a company on guard that night?—A. Yes, sir; C Company. The entire C Company was placed on guard in addition to the regular guard, with instructions they should form a line of skirmishers along that entire fence. And I gave them most positive instructions as to firing. They were not to fire under any circumstances unless it was in preservation of life, and under no circumstances were they to fire unless under order of their captain; and I might add, which I have not stated before, that my instructions to the company commanders when they went out on the firing line they were not to fire unless they received an order from me to do so; that my station would be at the central gate there.

Q. Did you make any distinction of the firing of men on account of locality—that is, those behind the wall and those to the right?—A. The only shots I heard to the right were these two shots I have testified to——

Q. You didn't understand my question. Did you draw any distinction as to what the men behind the wall were to do—your own men—after they had been posted and the men were right on an exposed portion?—A. I told them to take the ordinary precautions—better have the men lie down. It was hardly necessary to give that order to Captain Macklin.

Q. What did you do yourself after that, Major—after you dismissed the companies?—A. After I dismissed the companies to the barracks I walked over to Captain Lyon's house and got Mrs. Penrose and took her home, and I sat in a chair alongside of her until a little while before daylight. She was very much excited, worked up, and nervous.

Q. Then what did you do?—A. Before it was really daylight I went out and examined the quarters. I looked along first in a casual way, and when it got light enough for me to see well I examined the rear of the barracks of, first, C, B, and D Companies, and then I went up to the vacant set, looking to see if there were any bullet holes there at all.

Q What did you find?—A. I found no trace of any bullet holes whatever.

Q. Did you find any broken glass?—A. There were two windows broken in B Company barracks; one, a half pane, was knocked out, and the other looked as if an elbow might have been thrust through

wiping rod through each one of these guns. We examined them very carefully, smelled them; there was no indication of having been fired; there was oil in there, and a little dust that had accumulated.

Q. Did you get reports from your company commanders in regard to the inspections?—A. I got them from all. They reported to me that their rifles were all bright and clean; they found no traces of being fired, and that they had inspected their ammunition and that it was all accounted for.

The court then took a recess until 2 o'clock p. m., at which time the members of the court, the judge-advocates, the accused, his counsel, and the reporter resumed their seats.

Maj. C. W. PENROSE resumed the stand, and being reminded that he was still under oath, further testified as follows:

DIRECT EXAMINATION CONTINUED.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. I think you said this morning, just before the recess, that the company commanders reported to you that the guns were all in and that the ammunition was checked up correctly?—A. Yes, sir.

Q. Did you give any orders thereafter, or about that time, in regard to determining or ascertaining who the guilty parties were? If so, tell the court about that, just what they were.—A. Yes, sir. I sent for the company commanders and I told them I wished them to institute the most searching investigation they knew how to do to determine who the guilty parties were, if any, in the battalion, immediately; that I wanted them to get the noncommissioned officers together and talk to them particularly, as I thought any information we got we could get better from the noncommissioned officers than talking to the privates themselves; but I cautioned them particularly to see the old privates in the commands to see what knowledge they might have or be able to gain.

Q. When was that with respect to the interview you had with Mayor Combe that morning, the 14th?—A. I think that was before the interview, sir.

Q. Was that before Mayor Combe came out until you had given these instructions looking to the detecting of the guilty parties, if any existed in your command?—A. Yes, sir; I think it was before Mayor Combe arrived.

Q. What was the purpose of Mayor Combe's first visit to you that morning?—A. I think that it was to notify me that a committee would visit me some time that morning—a committee of citizens of Brownsville. I do not recall anything else particularly.

Q. Who was present, if anyone, at this interview?—A. I do not really recall anyone being present.

Q. Do you recall an interview or interviews with a Mr. Creager?—A. I sent for Mr. Creager on the morning of the 14th and asked him to come to my office, that I would like to consult with him.

Q. And did he come?—A. Yes, sir; he was there—he came at between 9 and 10 o'clock, I think it was, some time.

be of benefit and help to me, but I found after a very few moments' talk that he was so biased and prejudiced and so thoroughly convinced in his mind that the negroes in my battalion had done this shooting that I soon saw he could not be of any benefit to me at all—could not help me at all; he was not a broad enough minded man for that. That is about all, I think; the substance of the conversation. Of course I do not remember it word for word.

Q. Now, tell us about the visit of the committee, tell us who was present, how you happened to know it—generally speaking, tell us what occurred when that committee called on you.—A. I can not tell you who was present, sir. There was a committee of citizens who came out, headed by Mayor Combe, I think about 11 or half past 11 o'clock in the morning. There were 10 or 12, possibly more. The chairman, I happened to know, was Capt. William Kelly. They came to the office and Mayor Combe introduced them to Captain Lyon, Lieutenant Grier, and myself; I had sent word to Captain Lyon that I wished him to be present at this meeting. The chairman, Capt. William Kelly, then rose and told me that the night before a man had been killed in town, the lieutenant of police shot in the arm, his horse killed, several houses riddled with bullets, and they had undoubted proof that the deed was committed by men of my command. I replied to him that I was very sorry, indeed, that the evidence pointed so strongly to this deed having been committed by my men, and that I would do everything that lay in my power to detect the guilty men, whoever they might be, that I had already taken steps to that end, and that my efforts should never cease as long as I was in the service to try to detect these men. I told them that up to the present time we had absolutely obtained no clew whatever—and, by the way, one other thing he said to me, demanded that they be turned over to the civil authorities for punishment; I told him, as I said, that I would do everything in the world that I could, and if I found them they would be turned over to the proper authorities—I did not at any time state that they would be turned over to the civil authorities. That was the substance of the whole talk. Then there were a great many questions asked by different members of the committee, principally about their own safety and my ability to hold these men in check to prevent a repetition of what they claimed had occurred. I told them that I had then an entire company of infantry on guard, I told them roughly where it was, and that there would always be two officers of my command with that company. That did not altogether satisfy them; they wanted to know how two officers could control them. Well, I told them they could control them, because they were well-disciplined men, that with the officers with them there was no chance of their doing anything of that kind again. It all lay along these lines—a great many questions were asked me along that particular line—what they were I can not begin to remember, because one question followed right after another, and there were often discussions between them. I then told the gentlemen that I would be very glad indeed to take them along the line of my sentinels and show them how they were disposed.

Q. Well, did anyone else of that command—of your command—give a talk to that committee that day?—A. Captain Lyon was there, and during some of the conversation he asked if he could say

This suggestion is that you appoint a committee of three citizens of Brownsville, of which you should be chairman, to come to this post and make an investigation for yourselves.

I will place before such a committee every particle of evidence I have been able to obtain up to the present time and will summon before them every man of this post for such examination as they may desire to make.

Very respectfully,

C. W. PENROSE,
Major, Twenty-fifth Infantry, Commanding Post.

Counsel for the accused:

The pencil memorandum contains the names of the committee: John I. Kleiber, district attorney, twenty-eighth judicial district; John Bartlett, county judge of Cameron County; Stanley Welch, judge twenty-eighth judicial district, and William Kelly.

A. I will state to the court that this Captain Kelly, Mr. Kleiber, and Judge Bartlett called on me in response to that letter the next day—I think it was the 21st—and suggested the name of the Hon. Stanley Welch, who was judge of the twenty-eighth judicial district; I think they said he had arrived in town that morning—either that morning or the morning before. I told them I had no objection to putting just as many on the committee as they wanted to. I had suggested 3 because I thought 3 could do more than 6 or 8.

Q. Did you cease your efforts at any time, up to the time the companies were discharged, to discover the guilty parties, if they were in the command?—A. I never did cease. I carried it up to the last minute, almost, that they were discharged. I questioned the noncommissioned officers, and on several occasions I talked to them and begged them to try to ferret the thing out, not only for the sake of the battalion, the regiment, and the Army, but for the sake of their own race. They all assured me they had been doing everything in their power, but had been able to gain nothing whatever. I also talked to many of the old privates, men that I could depend upon, and they told me the same thing.

Q. Have you had occasion to make recommendations in regard to the methods to be pursued by the military authorities in this respect?—A. Yes, sir. Sometime after our battalion reached Fort Reno and I had given the men this extra guard, extra drill, extra fatigue, with no results whatever, I wrote a confidential letter to the military secretary of the department, making two suggestions.

Q. Will you please look at that letter there and tell the court what it is? (Paper to witness.)—A. Yes, sir. This is the letter—carbon copy of the letter—that I sent to the military secretary of the Department of Texas, dated September 20. It is not signed.

The judge-advocate:

May I ask if it is the intention of counsel to introduce this letter in evidence, which I presume it is?

Counsel for the accused:

Yes, sir.

The judge-advocate:

We believe that it would be better to read it from the printed copy of the War Department, because that contains no signature.

Counsel for the accused:

We will have him sign it, and I was going to say you can compare this with that and see if it is all right.

The judge-advocate:

Oh, yes; we know it is all right. We have compared it.

Counsel for the accused thereupon read the letter to the military secretary mentioned by the witness, as follows:

CONFIDENTIAL.]

FORT RENO, OKLA., *September 20, 1906.*

The MILITARY SECRETARY, DEPARTMENT OF TEXAS,
San Antonio, Tex.

SIR: In obedience to the department commander's instructions, contained in your telegrams of August 26 and 28, the enlisted men of Companies B, C, and D, Twenty-fifth Infantry, have been held at this post without privileges of any kind, and prior to arrival here, from August 14 to 27, were confined strictly to the limits of Fort Brown, Tex. Therefore they have had no liberty of any kind or character for over a month.

Since arriving at Fort Reno, in addition to allowing no privileges whatever, and being confined within the limits of the post, I have given the enlisted men of these companies extra guards, extra drills, and constant police work, besides having tattoo roll call for them, and always one and sometimes two check inspections after the regular 11 o'clock p. m. inspection.

At first I was under impression that these extra drills, police, and privations would have the effect of inducing some one who was not among the criminals, but who has the knowledge of the guilty parties to the shooting at Brownsville, to give some information that would lead to the detection of some of the men, but up to this time it has proven an utter failure, and I doubt very much if it will ever accomplish the desired results. In fact, I am of the opinion that it is having the contrary effect, by keeping the men constantly on their guard, and this view is shared by the officers of the battalion as well as many of the old noncommissioned officers who are thoroughly reliable and trustworthy, and whose opinions in such a matter are worthy of consideration.

In view of this fact, I respectfully suggest that one of the two following plans be authorized:

First. Take off all restrictions imposed, return to the regular routine of post duty, and lead the men to believe the whole Brownsville matter has been dropped, but have three colored detectives enlisted and one assigned to each of the three companies.

Second. That authority be granted by the Secretary of War to discharge, if necessary, all but 20 per cent of the enlisted men of the three companies, the discharges to be so notated that enlistment again would be impossible.

To carry out this latter suggestion, I would have it published to the men that on a certain specified date, a month later, for instance, if the criminals were not detected and reported, 20 per cent of each company would be discharged. At the end of a second period of thirty days, if the men still remained undetected, a second lot of 20 per cent of the original numbers of the companies would be discharged, and so on, in periods of thirty days, until but 20 per cent of the men are left. The men discharged, in all cases, to be selected by the company commanders.

This latter is a drastic measure and should, in my opinion, be resorted to only after the first suggestion had been given a fair trial and had proven a failure.

I am strongly of the opinion that but few men have any knowledge of the deplorable Brownsville affair, but it is quite evident that these few will never betray their comrades under present conditions. The majority of the men, particularly the old soldiers who have served their country for years gallantly and faithfully and borne themselves honorably, feel this matter very deeply, and I believe are doing all they can to detect the guilty, but it must be remembered the negro race is a very secretive one, and those having knowledge of the shooting, without being participants, will hesitate a long time, under most adverse conditions, before giving information.

I recommend that the first plan be given a fair trial, for once the present restraint is removed and the men given the usual liberty they will be much

more apt to talk, and especially after drinking a little; but to be reasonably hopeful of success detectives must be employed.

Very respectfully,

Major, Twenty-fifth Infantry, Commanding.

Q. Now, there is one thing in your letter of August 15, 1906, I notice, in evidence, which I wish to have you explain to the court (reading): "Were it not for the damaging evidence of the empty shells and used clips I should be of the firm belief that none of my men was in any way connected with the crime, but with this fact so painfully before me I am not only convinced it was perpetrated by men of this command, but that it was carefully planned beforehand;" and then you go on and call attention to the investigation made. I wish you would tell the court what convinced you that this had been perpetrated by the men?—A. The lack of any scars of bullets on the barracks and Captain Macklin's finding shells and clips at the mouth of the alley, and, I may add, too, that Doctor Combe told me they had picked up quite a number of them in the streets of Brownsville; I think he said from 75 to 100, although I did not see those.

Q. These were the causes that led up to your making that statement?—A. Yes, sir.

Q. Now, what caused you to state at that time that you believed that it was premeditated or carefully planned beforehand?—A. Simply because we were not able to detect anybody up to that time, the rifles were found absolutely clean, and the ammunition was carefully and accurately accounted for.

The president:

I beg your pardon, one moment. In quoting from the letter, what is the date of that?

Counsel for the accused:

August the 15th.

Q. When was this letter of August 15 actually written by you?—A. It was written late on the night of August the 15th, I think it was. I know it was written in the night, the 14th or 15th, I am not sure. Here it is, sir—I have my carbon copy—August the 15th.

Counsel for the accused:

It was introduced in evidence, you will recall, some time ago.

Q. You made a statement before Colonel Lovering, did you not?—A. Yes, sir.

Q. Did you have occasion to correct part of that statement? If so, tell the court the circumstances.—A. I did.

Q. Was the correction noted in the printed report, as you recall?—A. It is not, sir. After the pamphlet was published, entitled "The Brownsville Affray," by the War Department, I noticed in looking over my evidence—and it was some time after it was received, too, because mine was about the last I read—in the last paragraph I was asked the question had I ever talked with anybody in Brownsville relative to the Brownsville affray, and I am quoted as replying I had not.

Q. "No, sir; I did not."—A. Or, "No, sir; I did not." That is the substance of it. I do not know that I am quoting that exactly, but that is the substance. In fact, I did not notice it until my wife called my attention to it. I immediately then wrote a letter to Lieutenant-Colonel Lovering, then inspector-general of the department, explaining that if I had made such a statement as that I was either misquoted or it was not properly taken down or I did not understand the question, because I had talked to people in Brownsville—to one person in Brownsville, not people—and I had talked to Doctor Combe on several occasions. I wrote that letter. It must be on file in division headquarters if it has not been sent on to the War Department.

Q. Have you a copy of that letter?—A. Yes, sir; I made it in the form of an affidavit.

Counsel for the accused thereupon read in evidence the letter referred to by the witness, as follows:

FORT RENO, OKLA., *January 24, 1907.*

Lieut. Col. L. A. LOVERING,
Fourth United States Infantry, Acting Inspector-General,
Inspector-General, Southwestern Division, St. Louis, Mo.
(Through military channels.)

SIR: I have received a copy of the War Department document, entitled "Brownsville Affray," and in it, on page 24, my testimony appears, the last question and answer of which is as follows:

"Q. Did you ever have any conversation with citizens of Brownsville in which they expressed any opinion about the colored troops?—A. No, sir; I did not."

With reference to this answer, I either could not have understood your question or it was not properly recorded or I must have thought it referred to something else, for I talked almost daily with Doctor Combe, the mayor of Brownsville, on the behavior of the men, and he, on more than one occasion, particularly immediately after pay day, praised their conduct.

Doctor Combe was employed at Fort Brown, in the absence of a surgeon, to attend the sick from the time the battalion arrived to within a few days before we left. I consequently saw him frequently, and as he was mayor of Brownsville and in charge of the police of that city, I often asked how the men were behaving, and he always assured me they were doing exceptionally well.

I desire to make this correction, and request you to take such steps as you may deem necessary.

It will be remembered this testimony was taken down by a shorthand reporter and not read over after being completed. Otherwise I should probably have discovered the error.

Very respectfully,

C. W. PENROSE,
Major, Twenty-fifth United States Infantry.

TERRITORY OF OKLAHOMA, *County of Canadian, ss:*

Personally appeared before me, the undersigned authority, Maj. C. W. Penrose, Twenty-fifth United States Infantry, who, first being duly sworn, deposes and says that he wrote the foregoing letter, and on the date therein stated; that the signature attached thereto is his own, and the contents of this letter is true of his own knowledge.

C. W. PENROSE,
Major, Twenty-fifth United States Infantry.

Subscribed and sworn to before me this 24th day of January, 1907.

SAMUEL P. LYON,
Captain, Twenty-fifth United States Infantry,
Trial Officer, Summary Court.

Counsel for the accused:

You may take the witness.

CROSS-EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Major, I understood you to say this morning, as a result of the conversation you had with Mr. Evans and Mayor Combe about 5 p. m. on the evening of the 13th, that you gave certain orders for patrols to be sent out, for passes to be revoked, and for an order to be issued, if I understand you, at retreat, notifying the men that they would not be allowed out after 8 o'clock at night. Am I correct, sir?—A. Yes, sir.

Q. Did you give any orders to the guard than those mentioned?—A. That was all I gave to the guard.

Q. The guard was not increased in any way?—A. Not at all.

Q. Were any changes in orders given to the sentinel on No. 2 post?—A. Not unless they were given by the officer of the day.

Q. You gave the officer of the day no such order, I understand you?—A. I gave the officer of the day the order that no one would be permitted out of the post. That, of course, applied to No. 2 or any other guard—not alone to No. 2.

Q. You put no other sentinel around the barracks?—A. I did not. I saw no necessity for it whatever.

Q. Now, then, from your experience as major of the Twenty-fifth Infantry, did you notice any difference in the treatment of the soldiers at their last station, Niobrara, and that at Brownsville?—A. Personally I did not.

Q. Did you hear anything about it, Major, please?—A. There was nothing brought to me excepting those incidents that have been mentioned—the Tate-Newton affair, and so on. There was nothing brought to my knowledge at that time.

Q. Did you have any notice of separate bars being set up for your soldiers down there?—A. Yes.

Q. Did you ever hear any complaint in the command made on account of that by your men?—A. No complaints whatever. I heard both Captain Macklin and Captain Lyon; they told me that the men had accepted the thing and there was no trouble about it at all; they dwelt on that fact. I would like also to call attention, if I may, to the fact that Colonel Lovering, when he was making his investigation at Fort Reno, asked possibly the last half or last third of Company D, I think it was, that very question—the first time it came up—and out of maybe 10 or 15 men he examined but 2 said they had any feeling about separate bars at Brownsville.

Q. Do you remember what those 2 men said?—A. No; I do not know—I did not know of it until I heard it from the investigation of the Brownsville affair.

Q. Have you any knowledge of a letter having been written by Colonel Hoyt, colonel of your regiment, protesting about sending his regiment, or any portion thereof, to Texas?—A. Yes, sir.

Q. Did you assist in any way in the preparing of that letter?—A. I read it over. The colonel called me in the office and read it over to me.

Q. Why was this protest made, can you tell us?—A. There were officers who had served with colored troops in Texas and at the camp

of instruction at Fort Riley two years before, in which a Texas regiment was camped alongside of the Twenty-fifth Infantry. Word was sent to the Twenty-fifth Infantry one night that the Texans were going to clean them up. I think the commanding general sent down to the Twenty-fifth Infantry and told them to look out for themselves. I was told that; I was not there. Fortunately for the Texans, no such thing was done.

Q. Did the soldiers know of this letter of protest?—A. I don't know that they did; I suppose possibly they did, because these things leak out of the adjutant's office in spite of every precaution.

Q. It was an ordinary letter, sent through the ordinary mails—in other words, it was not a confidential letter, guarded?—A. I do not know, sir; I am not sure.

Q. Now, along with this letter just mentioned were there any affidavits of officers sent, to your knowledge?—A. Yes, sir; there were several.

Q. Could you tell us very briefly the purpose of those affidavits?—A. Well, I could only tell you in a general way.

Q. That is all I care for.—A. I remember there were four or five letters, and it was protesting against the treatment that the colored men had received while in Texas before, and particularly in this very city.

Q. Were they referring to the colored troops of their own regiments or were they officers who had served in other colored regiments?—A. Well, one of them at least—I don't know but what two—had served in the Twenty-fifth Infantry—one of them I know had. The others referred to the affair that occurred at the camp of instruction.

Q. Now, I would like to clear up one point, Major: You testified this morning, as I understand you, that when Captain Lyon, after having been sent outside of the wall to make an investigation, came back, that in one hand he had some clips and in the other hand some——A. I said Captain Macklin.

Q. I beg your pardon, that is what I meant to say. In one hand some clips, and in the other hand some 7 or 8 empty shells? If I misquote you, it is unintentional.—A. I think that is about right; yes, sir; I do not know the exact number of shells he had.

Q. Then later on, I believe you have testified, or it is in evidence at any rate, Mayor Combe presented you with some empty shells, a little later in the morning—we will say about 9 or 10 o'clock; I would like to know whether in all respects those two groups of empty shells were similar?

Counsel for the accused:

I simply want to say that the major has not testified about Mayor Combe bringing in any shells. He did testify that he subsequently was informed by Mayor Combe that he had found some 75 or 100 shells, or 75 or 80. That wasn't brought out. I just mentioned it so as to correct the evidence. That is all.

The judge-advocate:

The misquotation is unintentional.

Counsel for the accused:

There is no objection to the question, Captain Hay, at all, with the explanation, you understand.

Q. (The reporter read the question.)

A. I do not recall Mayor Combe showing me any shells at any time. He told me that there had been a number of shells picked up in the street, and I think he said between 75 and 100.

Q. Major, you do not want the court to understand that you are denying that Mayor Combe ever presented you with any shells?—A. I have no recollection whatever of his doing so.

Q. You do not remember it?—A. Yes; I think that is what I said—I do not recollect his showing me any shells at any time.

Q. Were you shown any other shells at any time purporting to be picked up in the streets of Brownsville by anyone except Captain Macklin?—A. No, sir.

Q. Did Captain Macklin make any remark about the disposition of these shells upon the ground when he picked them up?—A. Not at that time.

Q. Do you remember any remarks you made at that time to Captain Macklin?—A. Yes, sir; I think I said to Captain Macklin, "Our men have done this shooting."

Q. Leaving that for a moment. Do you happen to know or have you ever heard where the saloon of one Allison, a negro, was located in Brownsville?—A. I only knew it was located in a generally north, a little northeasterly direction, from parties inhabiting the place. I was never up in that part of the town.

Q. This man was a colored man, I believe?—A. He was a colored man. I never heard of him until the morning of the 14th—I mean of his saloon. He was a discharged man from the Twenty-fifth Infantry.

Q. Now, wasn't that in the same general direction from which those 2 shots you heard were fired?—A. I imagine it is in that same general direction.

Q. Now, you spoke of hearing these 3 quite distinct shots that were fired after the first 2 and the second 6 or 7?—A. Yes, sir.

Q. Can you tell us again, if you have already done so, when with reference to the call to arms those shots were fired?—A. Well, it is only guesswork on my part. I do not think it took me a minute to dress and get out of the house, and I do not think it took me over a minute, if it took me that long, to run across the parade ground to C Company's quarters. The call to arms was sounded when I was about half way across, so it must have been about a minute and a quarter or a minute and a half.

Q. A minute and a half after these 3 shots, did I understand you to say?—A. After these shots; yes, sir. Now, let me impress upon you, please, that is only guesswork.

Q. Certainly. But, as I understand you—I do not want to make you reiterate, I simply want to satisfy my own mind on the subject—you were in the house when you heard these first 3 shots?—A. Yes, sir.

Q. And you were halfway across the parade grounds, at least, when you heard the call to arms?—A. I think it was probably when I was halfway across the parade.

Q. Now, did these 3 shots sound anyways nearer than the first 6 shots?—A. Yes, sir; they did. I said I thought they seemed to stand out by themselves; they seemed to me louder than the others.

Q. Did you at any time, while going across the parade ground, or at any subsequent time, hear any sound of bullets passing over the post from the direction of town?—A. No, sir.

Q. None whatsoever?—A. None that I can recall at all.

Q. Now, I would like to have you tell the court, please, Major, whether those 3 distinct shots which you heard differed in any way from the other high-power rifles about which you have testified?—A. No, sir; I think not, except they sounded as though they might be a little nearer—a little nearer—but otherwise in all respects similar.

Q. At one place in your testimony you spoke of having heard what you thought were pistol shots, and gave it as your belief that they were pistol shots because they were not quite so loud?—A. Yes, sir.

Q. In all other respects these shots were similar to the high-power rifle shots?—A. No, sir.

Q. Except in their loudness?—A. There is just that distinction between pistol and rifle. I am satisfied in my mind they were pistol shots.

Q. They could not have been rifle shots fired farther down town?—A. Oh, no, sir; they were all fired right together.

Q. In your experience as a military man, could these with their, we may say, softer intonation, have been cartridges with reduced charge?—A. Well, now, that is pretty hard to tell. I don't know.

Q. Did you happen to be looking out your window while dressing?—A. I do not think I did. I was dressing on the opposite side of the room from the window.

Q. You have no recollection of seeing any gun flash three times near B Company?—A. No, sir; I saw no flashes at all.

Q. The noncommissioned officer in charge of Company C that night—have you testified who he was?—A. I don't think I have. It was Sergeant Brawner.

Q. And even after your arrival in front of C Company he was not there, as far as you know?—A. I did not see Sergeant Brawner that night, I don't think.

Q. And some 15 members of C Company were all in the company parade, I think you said?—A. When I first got over there?

Q. Yes, sir.—A. About that number—I don't know how many.

Q. I am not asking you for the exact number. Now, you spoke about Tamayo—the scavenger's cart, having heard that.—A. Yes, sir.

Q. Could you tell us whether or not his cart was moving slowly or rapidly when you first heard it?—A. No; I could not say as to that.

Q. You simply heard the sound?—A. I heard it going, and recognized it, hearing it almost every night. I could not say, however, whether it was going fast or slowly.

Q. Now, where was the cart when you first heard it, and where were you?—A. I was crossing directly from my quarters, over to C Company, and I think I heard the cart right about the administration building.

Q. It had passed out beyond the barracks?—A. Oh, yes; I think it was out beyond the parade ground.

Q. Now, let me ask you if you heard any noise from C Company's barracks or other barracks of pounding prior to your having given the order to break open the gun racks?—A. Not to distinguish it

as such. There was a lot of noise in both B and C Company barracks, but I thought it was the men stumbling over their lockers, and noise made generally in getting out. I might say that the barracks there were very narrow, and that the barrack lockers at the end of the bunks left very little of the aisle.

Q. Was there any more noise from any one company than from another?—A. I can not say that I noticed it.

Q. And you saw the sentinel, Howard, on post No. 2 after you left C Company and had given orders to break open the racks, I believe you said?—A. Yes, sir; I saw him immediately after that.

Q. Can you tell us, with any exactness, how close both you and Howard were to C Company at the time of your encounter?—A. How close to C Company?

Q. C Company; yes, sir.—A. I think it was just about in the interval between those two barracks.

Q. About midway between B and C Companies?—A. I think so; yes, sir.

Q. Upon the brick walk?—A. No, sir; he was a little back of the brick walk. I do not think that he was standing on the brick walk when I saw him.

Q. Lieutenant Grier, I believe, was the first officer whom you met upon this night?—A. Yes, sir; he was the first one that I saw.

Q. Did the thought come to you that it was peculiar that with so much firing, and, as you thought at that time, firing upon the post, that you heard no bullets passing over the post, or did you think of this at all?—A. I did not think of it at all. I thought the bullets were going into the barracks.

Q. And you heard no sound, I suppose, of anything of that kind?—A. No, sir; I was on the other side.

Q. You did not think about their passing clear through the barracks, in the event of their striking at all?—A. Yes, sir; I thought about that, too; but my whole mind was taken up with the idea of getting those men out. I must say I did not think much about bullets at that time at all.

Q. You have been in action, I suppose?—A. Yes, sir.

Q. And I think that you testified that Lawrason was the second officer you encountered?—A. The second officer I saw; yes, sir. I heard Captain Lyon, however, very early in the matter.

Q. I would like to ask you, at the risk of reiteration, how long all this firing that you heard that night kept up?—A. Well, I do not think it kept up over five or six minutes—possibly seven—that is a hard matter to determine; I never have determined it definitely in my own mind—I should say maybe between five and seven minutes; I think that would come within the limits then.

Q. I think you have testified, also, that it was all over just before the companies moved to the wall?—A. I think it was all over before the roll calls of B and C Companies were completed, but, of course, they did not get out on the wall until after that was completed. I was watching these two companies especially, because both were commanded by young officers who had never been in action. Captain Lyon I did not pay any attention to, because I knew he would do perfectly right.

Q. So the formality of roll call was in B Company and C Company?—A. It was. I heard Sergeant Sanders calling the roll in B Company, or C Company, I am not sure about that.

Q. Was that a routine matter, or ordered by you?—A. It was a routine matter.

Q. Didn't that strike you as extraordinary, that while the town was attacking the post they should hesitate, stop, and take up time—valuable time, perhaps—and call the roll?—A. No; it was not peculiar to me at all. I was particularly anxious to get the men out of the second-story rooms. I did not consider it anything peculiar at all in calling the roll.

Q. You were not with the Twenty-fifth Infantry on the La Loma line in the Philippines, were you, Major?—A. No, sir; I joined the Twenty-fifth in this country——

Q. I believe you said so.—A. At Fort Niobrara, in May, 1904.

Q. You have seen active service, though, I believe, in the Philippines?—A. No, sir; I have not seen active service in the Philippines.

Q. In Cuba, perhaps?—A. I was not in Cuba. I was in Porto Rico.

Q. Were you ever in a night attack?—A. No.

Q. Now, this firing to which you have referred to, did it all—that is, the general firing—sound like high-power rifles; or, in other words, toward the end was there any change in the character or density of the firing?—A. Well, it did slacken off a little in the end—that is, there were not so many shots fired.

Q. Yes; but the character—how about that?—A. Well, it sounded to me about the same.

Q. There was no change in it, as far as you remember now?—A. As far as I remembered then. I would like to state—I think I have failed to state—that after the companies were along the fence I heard three or four shots that struck me as being way uptown, way beyond anything that was heard before. That was after the companies were along the brick wall.

Q. Three or four?—A. Yes, sir; just simply three or four.

Q. Did it sound anything like a man emptying his six-shooter repeatedly?—A. Well, I couldn't tell at that distance what it was; it seemed to me way off.

Q. You gave the order to Lieutenant Lawrason, you have so testified, as soon as his company was formed to take them right to the wall and employ them in skirmishes. Now, in the face of such an order would a young officer, do you think in your opinion as a military man, take special pains to make an accurate roll call?—A. I think that Lieutenant Lawrason would take special pains to do well and correctly any order given him.

Q. But wouldn't the order to take his men to the wall seem to be of paramount importance, rather than to stand there and take up valuable time in making an accurate roll call?—A. No, sir; I don't think it would. That is something he has been brought up to.

Q. All orders are the same, then, to this officer?—A. Oh, no; not at all. I was standing right there by him.

Q. Captain Lyon, I believe, was the third officer whom you actually saw?—A. Yes, sir.

Q. I believe you testified you heard his voice before this?—A. Yes, sir; he was the third officer that I saw; yes, sir.

Q. Now, when was the first accurate roll call made of the men of the command?—A. I think the first one was B Company that was accurate.

Q. Why, then, did you consider it necessary after the arrival of Mayor Combe to give the order to verify your companies?—A. He said that men of my command had been out shooting up the town. I did not think the men could have gotten back—gotten in rank.

Q. You were not satisfied with the first roll calls, then?—A. I was perfectly satisfied with the first roll call, but there might have been some of those men killed in town.

Q. Some of which men, Major?—A. Some of the men of the Twenty-fifth Infantry.

Q. But if the first roll calls were accurate, weren't all the men reported there—all the men of the battalion?—A. All the men of B Company reported present; two men from C Company were reported absent. All were reported present or accounted for; the usual order in D Company.

Q. Then you were solicitous as to those two men of C Company?—A. Simply to see if any had gotten out.

Q. After the roll call?—A. Yes, sir.

Q. Did you think after the roll call the men would have jumped the wall and got over there?—A. I couldn't tell anything about it. I was accused after the roll call.

Q. How long after the shooting was over?—A. That this roll call was made?

Q. Yes, sir; approximately, of course.—A. I should say it was 1.20 or 1.30, something like that.

Q. About twenty minutes after 1?—A. Twenty minutes after 1 or half-past 1, somewhere about that time.

Q. As a matter of fact, wasn't this verification at the wall the first accurate roll call had in the battalion that night?—A. Not that I am aware of. I presumed the first one was accurate, from the reports I received.

Q. I am not speaking about B Company—I am speaking of the entire battalion?—A. Yes; I am speaking of the entire battalion.

Q. Wasn't roll call taken of B Company?—A. With the exception of two, all were acounted for. I did not know at that time—Captain Lyon said afterwards—that he had verified his company when it was along the wall.

Q. Did the sentinel, Howard, at any of the times you met him upon the night of the 13th, and early morning of the 14th of August, tell you that he had heard any bullets going over the post?—A. No, sir.

Q. Do you remember whether or not scavenger Tamayo was interviewed before Captain Lyon left upon his patrol through town?—A. Yes, sir; it was before he left.

Q. Why was there such haste in getting Tamayo's statement?—A. Simply we saw him there; I had walked down to see Captain Lyon, coming from the direction of the alley line, and we found Tamayo right there, and I questioned him then in the presence of Captain Lyon.

Q. But there was not the same amount of haste displayed in getting Howard's statement?—A. I had examined Howard twice, at that time, and I told Captain Lyon to examine him, too.

Q. Why was there such haste in getting his affidavit?—A. There was no haste that I know of. I told him to take it as soon as he could the next morning.

Q. Was it because you feared the other side, if we may use the word, might get hold of him and fix him?—A. Not at all. I simply wanted to get my side—if I had any side at all. We had been accused by the mayor—of course, that was later—of having shot up the town.

Q. Can you give us the names, Major, of the two men who were absent from C Company, from memory?—A. No, I can not, Captain. I can probably consult some of the records and give them to you; I do not remember who they were now; both were given me at the time, but I do not recall them.

Q. The two men who were absent did not include the noncommissioned officer in charge of quarters—that is, Sergeant Brawner, I think his name is?—A. No, sir; it seems to me one of those men was Sergeant Jackson, but I will not be sure about that at all.

Q. When did these men finally appear, to the best of your knowledge?—A. They returned the next morning, some time.

Q. Giving a satisfactory account of their absence?—A. Yes. Captain Macklin reported the matter to me. I know it was perfectly satisfactory at the time. I have forgotten exactly what it was. It seems to me that this man, whose name I have an idea was Jackson, said he was staying with a relative of his in town, but I am not sure about that.

Q. Did you know upon the early morning of the 14th of August the reputation of Mayor Combe?—A. No, sir; I did not know anything about him at all, excepting I had met him several times. I thought he was a very pleasant acquaintance.

Q. You knew also that he was kindly disposed—that is——A. Toward the service?

Q. Toward the Twenty-fifth Infantry in particular?—A. Yes; I think I recall hearing him express himself that way.

Q. Yes, sir; I think you so testified. Then you could not have thought that these remarks upon the morning of the 14th, when he said, "Major, your men have done this thing," were in any wise due to any spleen or ill will?—A. Not at all; not at all. I simply thought that the doctor was mistaken.

Q. Mayor Combe told you, upon his entry into the reservation, that several reliable and trustworthy people of the town had seen men of your command upon this supposed raid?—A. No; I do not think he said that.

Q. I did not intend to misquote the record. I am trying to find it here (referring to record). The mayor said: "Major, one man has been killed, the chief of police wounded, his horse killed, and it has been done by your men; it has been seen by several people."—A. Yes; that is the way I recollect it. He said that they had been seen by several people; one party of five and one of three.

Q. But you never saw anyone doing any shooting; you saw no soldiers, saw no one?—A. You ask me that question?

Q. Yes, sir. And yet you were loath to believe this testimony?—A. I say I heard from both Howard and Tamayo, who were right there at the spots while they were being fired, that the shots came

from over the fence; they saw no one at all. I heard from the sergeant of the guard down in that direction that he didn't know where it was; he had seen no shots. I heard from Corporal Madison that the sergeant of the first class of the hospital corps had heard three shots go over either his head or his house.

Q. Their testimony was simply tentative; they never saw any one?—A. No; neither did Doctor Combe see any one.

Q. But he told you that men of your command had been seen in town?—A. Yes.

Q. And even with that, weighing that against the questionable evidence of your men and the scavenger, Tamayo, you still could not believe it?—A. Weighing that against the evidence of my men, whom I knew and whom I believed in, I thought the doctor was mistaken or misinformed.

Q. Had you known Scavenger Tamayo very long?—A. Only since I had been at the post.

Q. I suppose your association with him was not at all close?—A. Not at all. I had only seen him a few times.

Q. So you did not know whether his word was to be relied upon or not?—A. No; I was taking it in connection with others.

Q. You testified this morning, Major, that you told the company commanders to see that the arms were locked, and gave them orders to inspect them at daylight?—A. Yes, sir.

Q. And you said you did that for the reason that it is difficult to inspect rifles at night?—A. Yes, sir.

Q. Was that your only reason?—A. That was my only reason. I had no faith at all in the doctor's report that my men had done the shooting, but to satisfy myself beyond any reasonable doubt I gave the orders to have these rifles locked up and to be inspected as soon as they could see in daylight.

Q. You made no attempt by experimenting to see whether or not the interior bore of the rifle could be seen at night by the aid of artificial light?—A. That night?

Q. Yes, sir.—A. Oh, no.

Q. Couldn't you have had a light upon the far side of the barracks that night? I think you said one reason you didn't light a light was you feared to make a target of it, or words to that effect. Couldn't a light have been made on the farther side of the barracks, away from the town?—A. Yes, sir.

Q. Could not a light of considerable brilliancy have been had there?—A. Yes, sir.

Q. And could not an inspection have been made there?—A. Could have.

Q. Do you think an accurate inspection?—A. I do not.

Q. Tell us the reason.—A. Because you couldn't tell whether a rifle had been fired on inspection at night.

Q. Did you ever try it?—A. I arrived at this conclusion from my experience with shotguns. I always clean them myself after I come home at night, and with a shotgun dismantled, so that I can hold th barrels right to the light—a Rochester—it frequently occurs when I think I have them polished until they look like a mi next morning they look like they have not been cleaned.

Q. But could not a clean rag been run through and any

of powder have been observed at night?—A. I presume so, if I had any reason to do that.

Q. And the only reason you did not do that was because you did not think your men had done the shooting?—A. Exactly. I do not say the only reason I did not do it. I say if there had been no reason to convince me my men had not done it I should have had everything inspected that night.

Q. Now, please tell us, Major, when, with reference to the arrival of Mayor Combe, did Corporal Madison report the result of his inspection of the lower post?—A. I think he came up while I was talking with Mayor Combe and Captain Lyon. I noticed him then and when Mayor Combe called me off to one side he stepped up and made that report to me.

Q. Do you remember about what length of time you had been talking?—A. To the mayor?

Q. Yes, sir.—A. Why, I don't think over eight or ten minutes—maybe only five minutes; I do not believe it could have been over five minutes.

Q. Did you give any orders as to the disposition of the keys to the gun racks?—A. I did not.

Q. You simply told the officers—the company commanders—to see that the arms were locked in the armracks?—A. That was it.

Q. And it is a fact, isn't it, that most of the senior noncommissioned officers slept elsewhere than in the barracks?—A. Most of them—oh, no; there were very few of them.

Q. Isn't it a fact that most of them did not sleep in the main squad room?—A. They slept in little rooms that were built in a corner of the squad room. It was nothing but a partition; I don't think it went to the ceiling.

Q. Isn't it a fact, then, that these armracks were at the mercy of junior noncommissioned officers and privates for the rest of the night?—A. Captain, I can not tell you anything about that; I was not in barracks. I gave the orders to the company commanders; there my duty in that respect ceases. I am not in the habit of going over to see that the company commander carries out a simple instruction like that unless there is some cause for it.

Q. You did not consider it necessary or incumbent upon you to caution these two younger officers——A. I did not.

Q. To see that the keys were carefully carried that night?

Counsel for the accused:

May it please the court, what two younger officers?

The judge-advocate:

May it please the court, the witness spoke a moment ago of having all faith and confidence in a tried officer, Captain Lyon, but not being certain about the probable conduct in action of two junior officers.

Counsel for the accused:

I just want to suggest he made a mistake. There were not but two junior officers there.

The judge-advocate:

If counsel will allow me to continue, I will straighten the matter out. I see at once what he refers to, and I will re-form my question to say the junior officer present at that time.

A. What is the question now?

The judge-advocate. (To the reporter.)

Instead of two junior officers insert in the question the junior officer present, and read the question.

(The reporter thereupon read the question as re-formed, as follows:)

Q. You did not consider it necessary or incumbent upon you to caution the junior officer present?—A. I would like to state, in connection with that, Captain, if you have no objection to it——

The judge-advocate:

Nothing whatsoever, sir.

A. When I stated about these young officers going along by the fence I stated they had no experience under fire, and that was the reason I went out there to see what they were doing. I had the utmost confidence in both of those young officers.

Q. Now, under the circumstances, with practically only corporals and privates on the floor of the squad room, could not rifles have been cleaned if the men had the keys to the armrack, from the time they came from the wall until daylight?—A. I presume they may have been. I, however, wish to distinctly state that I have not said that there were only corporals and privates on that floor. I do not know who were on the floor.

Q. Did the thought come to you that it might have been well to, we will say to stack arms, for instance, and place a guard in charge of a commissioned officer over them, and keep them until daylight?—A. No, sir.

Q. Or to have the armracks brought down near the gate under guard of the officer of the day?—A. It certainly did not.

Q. Or under guard of any kind? Did any one except the hospital steward, up to the time of the report of Mayor Combe, tell you anything about hearing bullets passing over the post?—A. Nobody else. That was reported by Corporal Madison.

Q. I do not want to confuse you, but didn't you also say that Tamayo told you?—A. That bullets came over him?

Q. Yes, sir.—A. He said that bullets came down the road, as I understood him.

Q. Was there anything in the appearance of the shells which Captain Macklin showed you that would indicate whether or not they had been fired recently?—A. The shells were apparently perfectly bright and new; they showed no corrosion of any kind on them which led me to believe that they had been fired recently.

Q. What was your conviction at that time as to who did the shooting, Major?—A. That my men had had something to do with the shooting, at all events.

Q. I do not remember whether or not this question has been asked, but were any notes made of the men whose guns were reinspected in the various companies, as far as you know—that is to say, the men's names jotted down anywhere?—A. I know of only the men's guns being inspected of B Company; that I inspected, and afterwards called Captain Lyon over to inspect them, and that time a wiping rod was run through the guns. There were no names kept of those

unwillingness or lack of desire on their part to come into Texas?—A. No, sir; I can not say that I ever did. The men all seemed delighted to get a change from Niobrara, and I do not think that I ever heard an enlisted man say anything about it.

Q. Did Mr. Creager tell you on the morning of August 13 of considerable feeling existing in the town against the soldiers?—A. On the 13th?

Q. Yes, sir. You have testified that he came some time after the 11th, I think?—A. Well, he spoke of the feeling in the South in regard to the men—about a man, I should say—and I told him then, at that time, that as long as these men behaved themselves that I should insist that they be properly treated. That is the only thing that I can recall of that.

Q. Do you know well Captain Kelly?—A. Capt. William Kelly, of Brownsville?

Q. Yes, sir.—A. No, sir; I can not say that I know him well. I had never heard of him until the morning of the 13th.

Q. Do you know whether or not he has a son in the Army?—A. Yes, sir; he has a son in the Army, that I know.

Q. Is he not in a colored regiment?—A. I think he is. Captain Kelly told me when he was mustered out he was in a colored regiment—when he was mustered out of a volunteer regiment.

Q. Now, you spoke about Private Newton. When you talked to him did he appear to be calm and cool; did he show any hostility at all toward Mr. Tate, or anyone in Brownsville?—A. Not a particle. He impressed me as being hurt that a man should be treated as he was, in the city of Brownsville, without the authorities taking note of it. That is the way he impressed me.

Q. Did Private Lipscomb talk as though he was aggrieved?—A. No, sir; he did not tell me. He told me about dropping down behind Newton when he passed; that when Newton was struck down he turned and went around the next corner, I think he said.

Q. Do you think Mr. Creager, upon the occasion of his visit to you upon the morning of the 13th, could have mentioned the evidence and you have forgotten it?—A. I know absolutely he did not; there is no question at all about it; he did not.

Q. You have testified, Major, that no increase in the number of the guard was made on the evening of the 13th, and also that a patrol, or patrols, were sent out. Do you know whether or not it was suggested to the senior noncommissioned officers of the company to be on the alert to see that your orders were carried out; that is, that no man should leave?—A. I do not.

Q. It was all up to No. 2, then?—A. It was up to the noncommissioned officers as well as No. 2—any commissioned or noncommissioned officers.

Q. You testified that the officer of the day reported that all had been brought in who had been found. Did that lead you to believe that all were in?—A. They were all in—all reported in—at 11 o'clock roll call.

Q. Yet two were out at 12?—A. Two were on pass.

Q. I understood you to say the passes had been revoked?—A. They had, but these men were not found, is the way I understand it, and they came in the next morning.

Q. "And the old guard returned to the quarters——" I have not quite finished the sentence, but that is the——A. That is the substance of it.

Q. And, again, in the next paragraph: "From testimony gathered by the Citizens' Committee and given to me by Doctor Combe I believe from seven to ten men were implicated in this matter. Some one of them must have had a key to the gun rack, and after check roll call was taken—for all were reported present at 11 p. m. roll call—they slipped out of quarters, did the shooting, returned while the companies were forming, and at some time during the early hours of the morning cleaned their rifles. This is made possible from the fact that the shooting all occurred within two short blocks of the barracks." There is nothing to correct in that, I suppose?—A. Not as written on the 15th of August.

Q. "I am conducting the most rigid examination possible, examining every man, and working in conjunction with the Citizens' Committee, and I believe the offenders will be apprehended, although it will take time."—A. (No answer.)

The judge-advocate:

We have nothing further with the witness, sir.

REDIRECT EXAMINATION.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. In connection with this letter of yours just read I will ask you if you have ever found any clew of any kind or any evidence that positively satisfies your mind that your men actually did that shooting?—A. No, sir. You ask if I found any evidence?

Q. Yes, sir.—A. No, sir.

Q. Well, do you know of any clew or information of any kind that satisfies your mind absolutely on this point?—A. That my men did not do the shooting?

Q. Did or did not.—A. No, sir; I have had testimony since then—I have heard testimony and read testimony that has changed my views somewhat from the first.

Q. That was your belief as expressed in that letter?—A. Yes, sir.

Q. On that particular point?—A. Yes, sir.

QUESTIONS BY ASSOCIATE COUNSEL FOR THE ACCUSED.

Q. I believe you used the name Sergeant Jackson in your cross-examination of C Company. Do you mean Sergeant Thomas?—A. Thomas, the man who was out.

Q. And I remember you used the name "Lipscomb," when I thought you meant "Newton," speaking of the aggrieved feeling. What did you mean?—A. It was Newton whom I referred to as making that expression that he felt aggrieved.

Q. When did the evidence first appear in print of the Brownsville affray?—A. I do not know.

Q. From his own knowledge, what information, if any, had Mayor Combe upon which he based his report to you that men of your command had done the shooting?—A. I do not think he had any of his

QUESTION BY A MEMBER.

Q. Did it come to your knowledge at check roll call that those two men who were on pass and did not show up until the next morning were absent?—A. No, sir; not at check roll call; that was not reported to me at check roll call.

Q. Well, in order to clear that up, to whom was the check roll call reported?—A. It is reported to the officer of the day where the noncommissioned officer is in charge of quarters.

Q. But not reported to you?—A. Not reported to me; no, sir.

Q. So you would not know whether they had been reported or not?—A. No, sir.

(Excused.)

Counsel for the accused:

The defense wishes to say that while we regret that certain witnesses call for we have not been able to get, their testimony would be largely corrob[illegible] we of evidence already before the court; and with that preliminary stat[illegible] announce that the defense rests.

The president:

And the prosecution?

The judge-advocate:

The prosecution has a witness or two in rebutt[illegible] are present on the outside.

Mrs. KATIE LEAHY, a witness for the prosecution, was recalled in rebuttal, and, being reminded that she was still under oath, further testified as follows:

EXAMINATION IN REBUTTAL.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Mrs. Leahy, do you remember having had a conversation, on or about the 25th of August, 1906, with Lieutenant Grier, of the Twenty-fifth Infantry?—A. It was not on the 25th, sir; it was after that; it may have been two or three days after.

Q. Did not, Mrs. Leahy, the battalion of the Twenty-fifth Infantry leave Brownsville on the 25th of August?—A. I believe so.

Q. Did Lieutenant Grier stay behind?—A. Yes, sir.

Q. Where was this conversation conducted?—A. In the dining room.

Q. Of what place, please?—A. My house.

Q. Did you remark at that time to Lieutenant Grier that Mayor Combe had a grievance against you?—A. No, sir; that is a mistake.

Q. Did you remark to Lieutenant Grier that Mayor Combe had not afforded you adequate police protection during all the time that the battalion of the Twenty-fifth was there, from the night of August 13 up to the time they went away?—A. Repeat that question, please.

(The reporter read the question.)

A. It is a mistake on Lieutenant Grier's part about Mayor Combe. I said my end of the town was not protected; that they had their detectives, or whatever you call those men, from the Miller Hotel up.

Q. Up? What do you mean by up?—A. Toward the post-office.

Q. Away from the post?—A. Yes, sir.

Q. But the dead line, so-called, then, was on Thirteenth street?—A. Yes, sir. And, furthermore, I told them I didn't need them.

Q. Did you tell him that you probably knew more about the real facts in the case than anyone in town?—A. I did, sir.

Q. And you stated you had never been approached or questioned in regard to it?—A. I did, sir.

Q. Can you give the court any reason why you were not so approached?—A. No, sir.

Q. Did you state to Lieutenant Grier during this conversation that about 12 o'clock on the night of the 13th of August you heard two shots which you supposed had been fired from the upper gallery of the middle barracks?—A. No, sir; those were not my words to Lieutenant Grier.

Q. What did you tell Lieutenant Grier?—A. I told Lieutenant Grier that I heard some shooting. I counted when the first shot Grier fired. I ran upstairs in an empty room. The fifth shot—or, I was first, the flash of the fifth shot—came off the gallery and I should say from nine to thirteen shots, and then the shooting was in counted from volleys.

Q. Did you state to Lieutenant Grier that in company with Judge Parks you went to a window overlooking the alley and stood in the window with Judge Parks?—A. I did not.

Q. Did you so do?—A. No, sir; I did not. I was in the window by myself—a separate, distinct room.

Q. Did you state that while standing at this window you saw 10 or 12 men jump the wall?—A. It was impossible for me to say such a thing, because I could not see the wall—could see nothing but the upper part of the barracks.

Q. Did you say you saw those men come down the alley?—A. I did not.

Q. Did you say that when they got up to your house you saw one of the men touch the man who was supposed to be the leader of the party, and you were standing in the window, dressed in a white wrapper?—A. Will you repeat that question, please?

(The reporter read the question.)

A. I did not, sir. My words were that when they were in the middle of the street one man came up and saw me in the window, turned, and said something I could not hear or understand. The other man answered: "No; keep ahead and shoot to the front," loud enough, clear enough, and distinct enough so that I could hear him.

Q. Could not his words have been, "No, not there, straight up the street?"—A. No, sir; they were not. He said distinctly, "Keep ahead and shoot to the front."

Q. Was there any man in the party whom you took to be the leader?—A. There were two men in front. I do not know whether they were leaders or not, but they were in front.

Q. Were commands given by those men?—A. No, sir; I heard no commands.

Q. Did you see either of these men after they passed your hotel at any time return back?—A. Yes, sir; I saw those whom I presumed

were the men go back, and one man I saw going back whom I presumed was one of them—going back with Captain Lyon's squad of men.

Q. Now, by the way, was this before or after the call to arms had sounded?—A. It was after the call to arms.

Q. Did you see them jump the wall into the post?—A. I did not, sir; I could not.

Q. Did you hear anybody say "Let's give them one more?"—A. I did not.

Q. Did you see these men rest their rifles on the wall and fire the last shots?—A. I did not.

Q. Did you see them disappear into the barracks?—A. I did not, sir.

Q. Did Judge Parks at any time beg you to go away from the window?—A. He did not.

Q. Were you at any time in a room with him while you were dressed in this symphony of white?—A. A woman in white, Captain Hay, please.

Q. Symphony?—A. No, sir; a woman, and only a woman.

Q. I appeal to the record.

(The reporter read the question.)

Q. Were you at any time in a room while this shooting was going on with Judge Parks?—A. I was not.

Q. Now, Mrs. Leahy, is there anything else that you care to state before this court to straighten out anything to which you have testified previously?—A. In what manner, please?

Q. In any manner whatsoever, Mrs. Leahy; we will give you the utmost latitude.—A. I am up here, sir, and asked the court's permission to let me contradict Lieutenant Grier as to what I told him. Either he made a mistake or it was done, as I have thought, through Major or Colonel Glenn to break my testimony and evidence down, sir. That is why I have asked the leniency of the court to come up here and refute what has been reported I said to Lieutenant Grier.

Q. Now, if there is anything we have not brought out, Mrs. Leahy, the court will grant you the privilege of stating it now.—A. I have nothing further. If the members of the court will take a picture of my house and the garrison wall they would see that if I were at that window it would be an utmost impossibility for me to see the fence; I saw the fence but once, on Elizabeth street, at the beginning of the shooting.

Q. Is there anything that you remember to have said which would have given Mr. Grier the impression that you said you saw the men rest their rifles on the wall and shoot over it?—A. No, sir; I saw them shoot over the post; but as to the wall and garrison, there was an iron fence between us.

Q. Where were you at this time, Mrs. Leahy?—A. Out on Elizabeth street.

Q. Now, I want to read you a question and an answer of Lieutenant Grier upon cross-examination: "Q. In your conversation with Mrs. Leahy, on August 25 or 26, did she not say anything to you about seeing these colored men fire two shots at the corner of the alley and Fourteenth street, in the direction of the Cowen house?—A. She didn't say it that way. She said they had passed beyond her

Q. Well, did you tell him anything more than was in your statement about that affair?—A. I did, sir.

Q. Well, did he take it down?—A. I don't know, for it was a private conversation.

Q. It was about this affair, though?—A. Yes, sir.

Q. Well, did Mr. Purdy, in the course of this conversation, tell you what the object of his investigation was?—A. I understood in the beginning, when he took my evidence or testimony, that it was simply to clear up that it was positive that these negroes had shot up the town, and for no other reason at all. That was my idea and opinion of it.

Q. Well, did you tell him anything that would indicate that others were implicated in it?—A. No, sir; I did not.

Q. You did not tell him that anybody else was implicated in it?—A. No, sir.

Q. If he did not take it all down, what did he leave out, Mrs. Leahy—do you recall anything that you told him in this conversation in the presence of Major Blocksom that he did not take down?—A. Colonel Glenn, I almost remember everything I told Mr. Purdy, but it was a confidential talk, and I refuse to repeat it.

Q. We would like very much to have it?—A. No, sir; I refuse to repeat my confidential talks with anybody.

Q. Well, will you tell us what the nature of it was?—A. The Brownsville riot, both sides of the question.

Q. Well, did he take down anything on the other side of the question that you told him?—A. My evidence is published there, and if you care for me to repeat it, I can almost repeat it, word for word, although I have never looked at the book since.

Q. Well, are you sure you did not tell him anything that would implicate some other people in that?—A. No, sir.

Q. You are not sure?—A. I am positive I did not tell him.

Q. Well, did he take down anything except what was on the soldiers' side—going to show that the soldiers did that—that you told him?—A. What is that?

Q. Did he take down as your evidence anything except that part that would go to show that the soldiers were guilty?—A. Not to my knowledge.

Q. Did he say anything to you about not wanting anything else but that?—A. I point blank refuse to give you my conversation with Mr. Purdy. You can ask him for it, if you care to, and if he cares to breach a promise and give it to you, you have my full permission to ask him for it, or Major Blocksom, either. You have my full permission to do so.

Q. Let us drop that. You did tell Lieutenant Grier, did you not, about having gone over to the Cowen house?—A. Yes, sir.

Q. Was the family of Mr. Cowen at home?—A. It was, sir.

Q. Was Mr. Cowen there?—A. No, sir.

Q. You happened to know that he was absent, and how long absent?—A. Yes, sir.

Q. How long was he absent, Mrs. Leahy?—A. Mr. Cowen must have left his home—for he stopped at my house previous to going uptown—about a quarter to 11 or 11 o'clock.

Q. He stopped at your house?—A. Yes, sir.

Q. Well, what fixed that in your mind, Mrs. Leahy, that it was

Major Blocksom or Lieutenant Purdy, and they can give it to you if they care to do so, but it will be a breach of promise, a breach of confidence, and a breach of etiquette on their part if they do it.

Q. But did you understand, from your conversation with Mr. Purdy, that he did not want anything unless it tended to fix the blame on the soldiers?—A. Repeat that, please.

Q. Did you understand, from your conversation with Mr. Purdy, that he did not want anything unless it tended to fix the blame on the soldiers?—A. No, sir; I had no conversation with him with that view.

Q. Well, at that time?—A. He asked me the questions and I simply answered the questions that he asked me—nothing more or less than what he asked me.

The judge-advocate:

May it please the court, unless counsel cares to announce his purpose in this examination, we believe it is improper. This witness was brought here as a witness in rebuttal.

Counsel for the accused:

We will not press the point. We have no further questions.

REDIRECT EXAMINATION.

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. I would like to ask you, Mrs. Leahy, did you know where Mr. Cowen's gun was on the night of the 13th?—A. I don't know.

Q. When was it brought over to your house?—A. After the shooting—after I had sent Judge Parks to go and hunt him and bring him home.

Q. He brought it to your house, did he?—A. Yes, sir.

Q. Do you know whether or not he first visited his house?—A. Yes, sir; he came to my house first, and we went over there.

Q. With or without the gun?—A. Without the gun; and we went over to his house and then we brought it over.

Q. He picked the gun up, then, in the house?—A. Yes, sir.

Q. Did you see him?—A. He went into a bedroom and came out in the hall where I was with the gun in his hand.

Q. Did he bring any ammunition?—A. I did not see the ammunition.

RECROSS-EXAMINATION.

QUESTIONS BY COUNSEL FOR THE ACCUSED.

Q. Mrs. Leahy, how did you happen to come up here—tell the court, won't you?—A. Yes, sir; I came up here for Lieutenant Grier to retract his remarks in his testimony.

Q. Mrs. Leahy, was this brought to your attention by various citizens of Brownsville?—A. My attention was attracted by his testimony in the Express; I saw it at midnight, and I left on the morning train, without the knowledge of anybody except two or three people in my office.

Q. Were there not a good many people trying to get your affidavit in regard to that?—A. Don't ask me those questions, please.

Q. Well, *isn't it a fact?*—A. It is a fact, sir.

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Q. Well, *isn't it a fact?*—A. It is a fact, sir.

Q. Between the time you received the Express, then, before you started to San Antonio, and the time you left you had no conversation with anybody on this subject?—A. No, sir.

Q. You came entirely of your own volition?—A. Yes, sir; I came voluntarily, because this paper has gone among my friends all over the United States, and I thought it was an injustice to myself, because Lieutenant Grier never received anything but the utmost courtesy while he boarded in my home.

QUESTIONS BY THE COURT.

Q. On what part of Elizabeth street were you when you saw the men shoot from the post? Please show from the map on the wall.—A. (Indicating on map.) This is my front gallery right out here. I came right outside, right down this little alleyway between my house and Mr. Kowalski's commission house, and I was standing right about there (indicating position almost in prolongation of the northern face of the house and about the middle of the street).

Q. You say, "We all expected trouble." Whom do you mean by "we?" What trouble did you expect?—A. We—I should say I will talk personally for myself—I expected there would be trouble between the soldiers and some of the town people, because they had had trouble—some of the soldiers had had trouble with some private parties in town a night previous to this shooting, there was that Evans affair, and it caused a great deal of indignation among the people of the city, because everybody naturally believed that Mr. and Mrs. Evans's tale was true, and the men of the town were very, very indignant.

(The witness was excused, but was immediately recalled, and further resumed her testimony, as follows:)

QUESTIONS BY THE JUDGE-ADVOCATE.

Q. Mrs. Leahy, is there anything more that you want to say in connection with this case as to what you told Lieutenant Grier at that time?—A. Or what Lieutenant Grier told me?

Q. Or what Lieutenant Grier told you?—A. No, sir. I want it distinctly understood that I am not up here to tell what Lieutenant Grier told me; I am not up here to retaliate, because it would hurt the honor of the officers, and that I do not care to do; not now. If the prosecution had asked me for it previous to this, I would have given it, but to-day I beg to be excused, sir.

Q. Is there anything further, Mrs. Leahy, you want to say?—A. I told Lieutenant Grier this was the only blemish on our history, the only black spot on the flag of the United States.

QUESTION BY THE COURT.

Q. Do you mean that there was danger of the soldiers attacking the citizens, or danger of the citizens attacking the soldiers?—A. I mean that there was danger that the citizens would attack the soldiers, and that the soldiers would attack the citizens.

(Excused.)

the way to the ceiling or not?—A. I couldn't say, sir; I don't think really they did, but I could not say positively.

Q. How many of those small rooms were there in B Company barracks?—A. There were four, sir.

Q. Upstairs?—A. Yes, sir.

Q. And two noncommissioned officers slept in each room, didn't they?—A. Yes, sir; there was room for two.

Q. You slept downstairs on the first floor?—A. Yes, sir; I slept right next to the storeroom.

Q. And the first sergeant slept where?—A. In his quarters, on the laundry side.

Q. McCurdy, did you prior to going down to Fort Brown from Fort Niobrara ever get ahead in ammunition by picking up any bandoliers or anything of the kind?—A. Only once; I got 20 rounds, or at least one bandolier, one morning just as I came off the range from a practice march; that was just about the time that we were having target practice.

Q. Was there an artificer in the company by the name of Jones, who used to go out and practice every day?—A. Yes, sir.

Q. How would he get his ammunition?—A. I issued it to him every morning.

Q. How much would you give him?—A. I don't know now exactly, but I always kept note of what I gave out; I gave him three or four bandoliers.

Q. Approximately, how many rounds would you give him?—A. I would give him 200 or 300 rounds each day.

Q. And he was supposed to turn back to you what he didn't use?—A. Yes, sir. I suppose he did, because he never did fire all that I gave him.

Q. He always returned some?—A. He always returned some.

Q. And you would give him 200 or 300 rounds of ammunition when he went out?—A. Yes, sir.

Q. You don't know whether anybody went with him when he went on the range or not?—A. No, sir; I do not.

The judge-advocate:

You may take the witness.

Counsel for the accused:

We have no questions.

(Excused.)

Counsel for the accused:

Are you through with the rebuttal?

The judge-advocate:

No, sir. To the best of my knowledge and belief the prosecution has two witnesses in rebuttal. One of them, I will be frank to say, is Amado Martinez, a servant in the house of Louis Cowen. I had previously stated to the court that I had no intention of recalling this witness. Since then testimony has been brought out by the defense which, it appears to me, allows us to present this evidence before the court and makes it important and, I may say, almost imperative. I telegraphed day before yesterday to Louis Cowen, for whom this servant had been working, and I received a telegram last night that she was no longer in his employ, but that he would do his best to locate her and would tell her to come at once. This afternoon I received a telegram saying that Amado Martinez would come, but was so inexperienced that she could not come alone.

The president:

I would like to ask, after the statement just made, if it will be cumulative evidence on the point he just spoke of—that is, if the certain party will testify that she had seen these men at a certain point?

The judge-advocate:

More or less, sir, it will be cumulative evidence. The residents and occupants of the Leahy Hotel have testified that they saw these men. Then the defense comes in with evidence in regard to certain experiments conducted in an arroya to simulate the conditions as existing at the Leahy Hotel. This woman was on the first floor of the Cowen house, I am told, went to a window, looked out, and saw men firing on the house. And I consider it as in rebuttal of the evidence introduced by the defense in regard to their experiments at Fort McIntosh.

Counsel for the accused:

Our position is this: If this is material, then the witness should have been introduced, so we could meet the case at that time. To come in here at the very last day of the trial and inject that in the case, after the trial has been going on for weeks and weeks, is improper, and we shall object to it most strenuously.

The judge-advocate:

I wish to say that if this so-called expert testimony had not been introduced by the defense her testimony would not have been necessary.

The president:

For the information of the court, I would like to ask how long it was that the case of humanity ran before this woman could have been spared and brought back again as a witness?

The judge-advocate:

As to that, I am not aware, sir. When I sent her back, as I said to the court, it was with the determination not to recall her again; so it has passed beyond my ken.

A member:

I would like to ask whether an attempt was made to get this witness shortly after the experiments had been submitted to the court?

The judge-advocate:

The attempt was made, I think I have already stated, day before yesterday noon. I may be wrong on that assumption.

A member:

I would like to know when this experimental evidence went in.

The president:

In the meantime, perhaps the assistant counsel could refresh the memory of counsel in regard to the date that he attempted to get the witness.

Counsel for the accused:

I think this expert testimony was finished Monday last. To-day is Thursday, and this is clearly opening up the case and getting in cumulative evidence, and is entirely unfair; it is not in rebuttal at all.

The president:

Can an answer be made with regard to the time when an attempt was made to get the witness?

The judge-advocate:

Yes, sir; I can state by consulting the records. I am not certain in my mind whether it was day before yesterday or yesterday noon.

The judge-advocate:

It is not a fact. It is true that I had the information in my possession through the Purdy report, but I did not read it over until yesterday, carefully—all the testimony.

Counsel for the accused:

But it is a fact that this witness was here before the court, and you had her introduced, and you were going to introduce her——

The judge-advocate:

I never introduced her before the court.

Counsel for the accused:

But you had her here and were about to introduce her until the question of the interpreter came up. We want to go on record as stating distinctly and positively that the announcement there shows conclusively and clearly that the judge-advocate had the information at the beginning of the trial.

The judge-advocate:

I had the witness, sir.

Counsel for the accused:

Had the witness, and of his own motion dismissed that witness; he had practically allowed this case to come to a determination, and there is nothing in the testimony mentioned to show that he has not reopened the case. We want an end to this case, and we are decidedly objecting to the opening up of the case again. It is not in rebuttal of our testimony.

The president:

I would like, for my information, to know when and how it happened that this matter was taken up yesterday.

The judge-advocate:

I do not know as I can give the court an analysis of my mental processes, sir; but Mr. Fitch and myself were discussing the case——

The president:

That is what I wanted to know.

Assistant judge-advocate:

May it please the court, I would like to state, inasmuch as my name has been mentioned here, that in this connection when the judge-advocate and I were talking over the advisability or necessity of examining this witness my belief was that inasmuch as the judge-advocate had introduced plenty of witnesses to show that there was some shooting down there, and that it was done by negro soldiers, nevertheless expert testimony was introduced on the other side to show that people could not see anything at night, at all, and it seemed to me that inasmuch as this woman was standing at an open window, just a few feet away from a Rochester lamp on a table in the rear of her, with this light streaming out through the open window, and she leaning out on the window sill to close these shutters, and the window not more than 3 or 4 feet from the alley, at the time the soldiers first started to shooting there, and the light shining on them, my contention was that we ought to have her, because she is one of the few people who did see these men in a bright light; lots of people had seen them by the aid of lamps, with greater or less distinctness, but this was one of the few cases where the people saw them squarely.

Counsel for the accused:

There could not be a clearer case that it is absolutely evidence that was known long, long before the closing of the case.

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Counsel for the accused:

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Q. Please describe what these are.—A. In the Krag rifle and new Springfield, model 1903, there are four lands, which leave corresponding grooves on the jacket of the projectile.

Q. If the bullet, after having been fired, is picked up and is found not to be mutilated to any great extent, the marks of these four lands, if fired from an ordinary Springfield rifle, are always apparent, are they not?—A. They are very distinct.

Q. And it does not need a microscopic examination to tell whether these other marks on there might be the marks of the lands or not?—A. It does not. Sometimes there are little marks—come in contact with stones; the bullets having the same rotary motion the lands give it, these marks are parallel, but it is not difficult to distinguish.

Q. And unless the bullet is smashed up pretty badly these marks are always apparent, are they not?—A. I would say they are always apparent. They stay with the jacket if the bullet is smashed up. I did not quite finish. And the only Winchester I know of that can shoot such a projectile has six lands instead of four—that would be the way of distinguishing—and the lands are not so high or prominent as those of the Government rifle.

Q. Were you called before the Purdy investigating committee, or before Mr. Purdy, rather, when he was down here investigating the Brownsville affair?

By counsel:

What's the purpose of this? We don't understand that the Purdy investigation is allowable evidence, and unless you can show it we are going to object to your going into it, may it please the court.

By assistant judge-advocate:

May it please the court, the purpose of this is to endeavor to ascertain from Captain Ely whether or not before Mr. Purdy he was shown certain shells, clips, and bullets that were picked up in Brownsville. Said shells, clips, and bullets are now in the hands of the Senate committee and we have been unable to get them. We have wired twice, I believe, for them, and have been unable to get them, and Major Blocksom has already testified with reference to these bullets, but the defense upon its cross-examination apparently tried to shake the value of his testimony as an expert by giving him a couple of shells made by the Union Metallic Cartridge Company, which Major Blocksom said looked different from the ordinary Springfield shell, and he didn't remember having seen any of those before, but he thought they could be fired in a Springfield, and thought maybe it was just a new kind of ammunition to him; but inasmuch as the defense has attempted to shake his testimony in that way we thought it necessary or advisable, inasmuch as we can't get the bullets and shells here themselves in order to exhibit them to the court, to have Captain Ely here, who did see those shells at the time Mr. Purdy was making the investigation and who is an expert on the subject——

By counsel:

May it please the court, we enter now the same objection and protest to the introduction of this evidence as we did to the introduction of the evidence last evening. It is perfectly patent that this evidence has been within reach of the prosecution; it has been within their power to get it for the past seven weeks. They consumed about five weeks in the presentation of the prosecution, and, as I say, this evidence was in their hands all the time. They knew all about the testimony of Major Blocksom, and if that needed bolstering up the time to bolster it up was while presenting the prosecution. Furthermore, this witness can not testify to anything in regard to those shells except hearsay; the shells are not before us, we have no means to cross-examine on it, to test the accuracy of his statements, and we object to any examination on that at all; it is improper on rebuttal.

By counsel:

May it please the court, just one word more. I don't believe I ever heard a plainer case of hearsay evidence, plainer than this is. Major Blocksom's testimony on that point was absolutely immaterial, incompetent, and inadmissible, and was put in over our objection, if I remember correctly, and I presume, on the theory that Major Blocksom was an inspector sent down there. There isn't a civil court in this country that would have listened two minutes to Major Blocksom's testimony without the presence of all the evidence he collected at that time, and would have required him to trace that bullet so accurately as to show beyond the slightest possibility of a doubt that he knew all about it, had traced it, and had kept it in his possession. Here is a man sent down there six months after the event occurred, a man certainly who is tainted by the evidence produced here by the prosecution itself, who say distinctly that Mr. Purdy rejected everything that didn't go to show the guilt of these negro soldiers, as expressed. The two star witnesses for the prosecution testified positively that this man went down there purposely, his main object six months after or five months after was to convict the negro soldiers, and he comes up here—300 or 400 miles from that place—and he tells this witness, forsooth, that certain bullets and cartridges were picked up down there. Can it be argued for a minute that that sort of evidence is going to be admitted before this court on rebuttal? The assistant judge-advocate said distinctly before this court that they discussed the very question of whether this evidence should be introduced before the prosecution closed, in order to bolster up Major Blocksom's evidence, and they decided that they would not. We weren't taken into their confidence; we don't know and we don't care what reasons actuated them in that regard, but we do care when they have closed the case, and when we have rested our case, to their putting in accumulative evidence, and it is purely hearsay evidence and clearly inadmissible—must be.

By assistant judge-advocate:

May it please the court, Major Blocksom, who has already testified before this court as to the finding of these bullets and as to the receipt by Mr. Purdy of certain shells, clips, and so on, turned over to him by the mayor of Brownsville was, according to this pamphlet entitled "Additional Testimony in the Brownsville Affair," or otherwise known as the Purdy report, was present at the time the witness who is now on the stand made his statements before Mr. Purdy relative to these shells, clips, balls, and so on, and Major Blocksom, in fact, swore this witness in, and the testimony given by the witness now on the stand was given in the presence of Major Blocksom, who has already testified as to the fact of the disposition of those shells and as to the fact that he has not seen them since they were turned over to Mr. Purdy, or since Mr. Purdy left for Washington with these exhibits, and we have been unable to get them; and this is the very best evidence we can produce, and, if necessary, we can recall Major Blocksom on the stand and let him state that the shells and bullets that were exhibited to Captain Ely, when he was called before Mr. Purdy, were identically the shells, bullets, and so on that he himself saw in Brownsville, and that the bullets that were dug out of the Yturria house and picked up in the Garza house and in the Cowen house by him, or seen by him, were shown to Captain Ely and that Captain Ely identified them absolutely. If it is necessary to call Major Blocksom in order to connect Captain Ely's evidence with the shells themselves, the prosecution is perfectly willing to do that, and that would complete the link in the chain that seems to be resting heavily on the shoulders of the defense.

By president of court:

Is Captain Ely introduced as an expert?

By assistant judge-advocate:

He is introduced as an expert. I was going to ask him a few other questions in regard to experience in target practice and familiarity with rifles in general—sporting rifles and regular army rifles. He has been a sportsman all his life, as well as a soldier.

Q. To change the subject, Captain Ely. From your experience as an army officer, is it a difficult thing or not for individual men in companies to get ahead a dozen or two rounds of ammunition without being detected?

By counsel:

We object to that question until it is shown what his service has been and in what organizations.

By assistant judge-advocate:

May it please the court, it is already in evidence that Captain Ely has had nearly twenty years' service in the United States Army.

By counsel:

The only regiment under discussion is the Twenty-fifth Infantry. Unless he has had some experience in that it is absolutely immaterial, incompetent, and we object.

By assistant judge-advocate:

May it please the court, so far as I know, Captain Ely has never had any experience with the Twenty-fifth Infantry, but the custom in regiments throughout the service in regard to keeping check on the ammunition, I think, does not vary greatly between the Twenty-fifth Infantry and other regiments. I think it is admissible on the ground of Captain Ely's service as an army officer, and it is of but slight importance, or none at all, whether he ever served in the Twenty-fifth Infantry or whether he ever served with Companies C, B, and D.

By counsel:

It is hardly worth while to say to the court, who will probably take judicial notice of the fact, that all conditions vary in all regiments, and naturally his experience would be limited to his own practice, which we have no interest in whatever.

By president:

Is the question withdrawn?

By assistant judge-advocate:

No, sir; we desire a ruling of the court. I think Captain Ely's experience is——

(Reporter then read over the question objected to.)

The accused, his counsels, the witness, the reporter, and the judge-advocates then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce that the objection is not sustained.

(Question was repeated to witness.)

A. From my experience I would say it is comparatively easy for a man desiring to possess a few extra rounds of ammunition to obtain the same. I have been at several department, division, and army competitions and at the ordinary target practice, winter practice, subsequent season practice, post competitions, etc., and at almost all these practices and competitions the ammunition is left out where men can get it, sometimes checked and sometimes unchecked. It would be very easy for them to take more than they were to actually use and carry the same away with them. With the interchange of empty shells for loaded ammunition it is very easy for this ammunition to be unaccounted for, as only that which is actually received from arsenals is generally accounted for.

Q. Captain Ely, are the clips that are used with the ammunition furnished by the Government for the Springfield rifle, model 1903, distinguishable from the clips used with the ammunition used in a Mauser rifle?—A. Yes.

Q. So that a person familiar with the Springfield clip could readily recognize it as such?—A. Yes. I would state, however, that while making this statement, I was familiar with the Mauser clip some time ago, but in examining the Springfield clip I recognize it as an entirely new clip; but I could not state definitely wherein it differs from the Mauser, except I knew it to be strange and different from the Mauser.

CROSS-EXAMINATION.

QUESTIONS BY THE ACCUSED.

By counsel:

Before beginning I would like to have the question and answer read that we objected to as to part of the answer.

(Reporter then read from record the question and answer referred to, page [—].)

Q. Captain Ely, how many fired projectiles of the Springfield rifle have you examined—the Springfield cartridge?—A. I could not tell exactly; a large number of hundreds.

Q. Yes. When and where?—A. On the target range at Fort Leavenworth and the target range at Fort Sam Houston and Leon Springs, and those showed me by Mr. Purdy.

Q. Never mind those; you don't know whether those were or not, except on his say. We don't want to go into that; it has been objected to and sustained. Aside from those—you have examined them at that place—did you ever see any of them where the cartridge had slipped and taken the grooves?—A. No.

Q. Did you ever see any where the grooves had been worn down pretty smooth?—A. Pretty smooth; yes.

Q. You never saw one that showed apparently more than four lands fired from the Springfield or the Krag?—A. Yes; I have seen them where the lands evidently had been so much worn—perhaps that would change that last answer, if that is what you mean—that forced it, that gave a greater groove than the actual width of the land. If that is what you mean by slipping, that last answer should be slightly changed.

Q. You have seen some that had apparently more than four land marks fired from these rifles?—A. No; not more than four lands, because this slipping was such it didn't give the regular interval between lands. It was apparent it was a slip.

Q. You have never seen any, in all those you have examined, where there was apparently, to the naked eye, more than four lands?—A. No; every one that I have seen that slipped it was apparent it was a slip, and not more than four lands; otherwise it would be eight lands——

Q. You have never seen one where there was clear to the naked eye the marks of more than four?—A. No.

Q. How many times did you ever fire Springfield cartridges through the Winchester you spoke of?—A. I never fired one.

Q. You ever see one that had been fired?—A. No.

Q. Then *you don't* know anything about it?—A. Oh, yes.

those; it is the ordinary Winchester rifle having the ordinary number of lands of the Winchester make, and their catalogue gives those lands all the same.

Q. Then you are positive, from the catalogue and from other Winchesters you have seen?—A. Yes.

Q. But you never personally fired a bullet from it, and you don't know whether it will make six impressions or not, from your own personal knowledge, from having seen it?—A. As there are six lands, I suppose it would make——

Q. Do you know of your own knowledge?—A. I know of my own knowledge if there are six lands in a gun it would make six impressions.

Q. But you never saw it?—A. Don't have to see that.

Q. Did you ever serve on the Rio Grande border?

(Question not answered.)

Q. Do you know if there is any other rifle that fires the new army Springfield cartridge, except the Springfield rifle itself and this Winchester you testify you have never seen?—A. As far as my knowledge goes, there isn't.

Q. You know nothing about it?—A. No; these are the only ones I know of.

Q. If one of the manufacturing people guaranteed it for the use of the Marlin, would you testify it was used for the Marlin, on the same principle you testified the other has six lands because those you have seen have six lands?—A. I didn't get the question.

Q. If either of the manufacturing companies who manufacture ammunition guaranteed the ammunition that they make for the Government rifle can be used in the Marlin or the Savage, wouldn't you say, on the same principle, that that could be fired from that rifle? And by the same principle—I mean the principle you testified to—there being six lands in the new Winchester rifle?

By assistant judge-advocate:

I would like to have the question read over. I think counsel made an erroneous statement there at the start in stating that the catalogue said these cartridges could be fired from certain arms, and I think the catalogue merely states that they guarantee these cartridges when used in certain rifles.

By judge-advocate:

I suppose you refer to the catalogue?

By counsel:

No; I refer to the exhibit of ammunition.

(Counsel hands witness box of ammunition, marked, for convenience, "No. 17," already in evidence and hereto appended and marked "———.")

Q. Now, I will change the question. Isn't it a fact that that is guaranteed for others than the Winchester rifle?—A. Yes.

Q. What other rifles is it guaranteed for—the ammunition you have in your hand?—A. Winchester, Marlin, Remington, Savage—magazine and single-shot rifles.

Q. I will show you another exhibit which also has a guaranty on it. (Hands witness Exhibit —, marked, for convenience, "18.") Isn't that a similar guaranty?—A. Yes.

they guarantee it, or some of them be fired and others not. It is easier to determine the one fact than it is the other.

Q. The same general class of information, though, upon which to base a statement, isn't it—the catalogue and the published information on that ammunition?—A. Published information? Yes; because they are more liable to err in one case than the other. If they advertise six lands they must have six lands.

Q. If they guarantee, they are——A. I think they are reliable.

Q. Pretty reliable people, and their guaranty is pretty good?—A. Pretty good; yes.

Q. Where did you go to purchase this steel-jacketed ammunition for the Krag?—A. Hummer Hardware Company.

Q. When did you go?—A. This was at the time Mr. Purdy was here; about two months ago, I guess.

Q. Have you been since?—A. No.

Q. That's the only time you tried to get it?—A. Yes.

Q. As I understand, you said they could send for it for you?—A. Yes; and they sometimes have it on hand in small quantities.

Q. Get any quantity you want on short notice?—A. Oh, yes.

Q. And I understood you to say that you couldn't distinguish, really, by any description you were able to give, between the clips for the Mauser and the clips of the new Springfield, except, if I recall you, the ones you examined appeared narrower?—A. No. It seemed strange and different to me. I used to know the Mauser pretty well, but I don't remember it well enough to explain technically; it was narrower and didn't have this interlocking clip to hold the spring in place.

Q. You have not seen a Mauser clip since when?—A. Six years ago.

Q. So you don't know anything, from personal knowledge, about the clip they make now?—A. No; might have been changed.

Q. When you were testifying about this ammunition were you giving your own practice or whose practice were you giving—about men having extra ammunition in the company? I thought you said from your own experience.—A. I have seen it in the Eighteenth Infantry, Twenty-second Infantry, Twenty-sixth Infantry——

Q. Was it your own experience?—A. Yes. I have been able to get cartridges from them that were serviceable—Thirteenth Cavalry.

Q. You yourself, as an officer, were in the habit of getting them?—A. They offered them to me; they had extra ammunition. I wanted extra ammunition, and they had it.

Q. Did you intend that to apply to enlisted men of your own command?—A. No; this extra ammunition, excepting in the case of the Thirteenth Cavalry, where it was found by search—they had something over 13,000 rounds—is kept in storehouses under lock and key; none available for enlisted men.

Q. Your own practice is what—what you testified to?—A. There is an order out now; every round is accounted for——

Q. I understand; I want your practice. You said, "From my own experience, no trouble for men to get extra ammunition." Is that your practice in your company?—A. In my practice the men did; the men could get extra ammunition.

Q. Do you know whether that is true of other companies or not,

Q. You never have had suspicion?—A. No; never have.

Q. Your nineteen years' service included cadet service for four years?—A. Yes.

Q. And when you certify at the end of the quarter or the end of six months that your ammunition is there you do make sure that all the ammunition in the hands of the company or in the hands of the men is accounted for strictly?—A. I don't go through their clothing, mattress, bags, etc., where, if they wanted to steal, they could hide it. I go through the ordnance storeroom and examine what the men have on hand.

Q. You don't examine their foot lockers to see if they have it there?—A. I examine those every Saturday; they are open to view then.

(Counsel here sent for a new Springfield rifle, model 1903.)

By counsel:

We would like to have this witness test these cartridges we have submitted here; he has thrown some doubt as to whether they are for the army gun.

By judge-advocate:

We object at this time to this use of the witness in rebuttal; it is attempting to demonstrate something new to the court which was not brought out on direct examination in rebuttal, and we shall object and will object now to the introduction of any such demonstration to the court.

By counsel:

May it please the court, you will recall that this very ammunition was identified, two of them by witnesses for the prosecution, and introduced without objection. Here comes another expert that he introduces, who attempts to cast some doubt on it, and we wish to demonstrate by him in cross-examination that he is in error, and we have a right to do it, and there is only one way, and that is the practical way, and we maintain we have that right and will ask for a ruling of the court.

By judge-advocate:

We still affirm this is using a witness in rebuttal for the witness in surrebuttal, and we claim——

By counsel:

This is simply cross-examination on rebuttal.

By judge-advocate:

Is not proper cross-examination, and we will object when the rifle is brought into court, and will make the objection now.

By counsel:

We are willing for the court to pass on it.

The accused, his counsels, the witness, the reporter, and the judge-advocates then withdrew, and the court was closed, and, on being opened, the president announced, in their presence, as follows:

I am instructed by the court to announce that the objection is not sustained.

The court then took a recess until 11.30 o'clock a. m., at which hour the members of the court, the accused, his counsels, the witness, the reporter, and the judge-advocates resumed their seats.

By assistant judge-advocate:

May it please the court, before proceeding with this experiment, the prosecution would be very much obliged to the defense if they would state what they intend to show by this experiment. The record shows, may it please the

By counsel:

We object to that. It isn't shown that he is an expert on it. Lay the proper foundation and we won't object.

Q. How long have you used the Winchester ammunition for sporting purposes?—A. About twelve years.

Q. You are familiar with the different kind of cartridges they put out and the ammunition they furnish for sporting rifles? You have seen a good many boxes of that?—A. I have seen a good many boxes.

Q. And in each case there is a guaranty on the face of the box, guaranteeing that ammunition in certain makes of rifles, usually the Winchester, Marlin, and Remington, is that not so?

By counsel:

We object to that as leading.

By assistant judge-advocate:

I will change it.

Q. What is it customary for this guaranty to set forth with reference to the guaranty made by the company for that ammunition when used in certain rifles; what guns are usually put down, or rifles of prominent manufacture of the United States; such as what?—A. Winchester and Marlin or Remington.

Q. So that's merely the ordinary guaranty that's put on, is it not?—A. As far as I know, yes; but that's merely guesswork.

Q. Have you ever heard of or seen any rifle, aside from the United States Army Springfield rifle, that will use that ammunition you have spoken of?

By counsel:

We object to that. It has been covered. The witness has already testified on direct examination what he knew about it.

By assistant judge-advocate:

May it please the court, this may be repetition, but I think not. I think the witness stated he believed it could be fired in that, but I want to find out if he knows of any other rifle, of his own knowledge, that it could be fired through. Is the question still objected to?

By counsel:

Still objected to. It is negative evidence anyway, and it has been covered—is not to cover anything that has been brought out.

By associate judge-advocate:

We will withdraw the question. It is immaterial.

RECROSS-EXAMINATION.

QUESTIONS BY THE ACCUSED.

Q. As I understand you, you said you know nothing about the customs as to guaranties, as you said it was more or less guesswork?—A. Yes; I am not really very familiar.

EXAMINATION BY THE COURT.

Q. What has been your actual service during the past three years and where?—A. During the past three years I was in command of the battalion of the Twenty-sixth for one month at target range, Leon

now in use?—A. I have given especial attention to the rifle firing and the study of rifle fire, and the causes of motion of projectiles. This during practically all my service; I have also hunted. Please read the question again.

(Question repeated.)

A. I have used Winchester and Remington guns in hunting, and from the theory of rifle making knew the number of lands to be greater and shallower than the military rifle; the lands of the military rifle being deeper, for purpose of economy with loss of accuracy. I have studied ballistics; done a great deal of firing at competitions and with troops and in the field. The only knowledge of the projectiles and rifles, military rifles, is from the Government publications, which I am quite familiar with.

Q. Then you did not do this to prepare yourself specially as an expert in cases like the one now before the court?—A. I did not.

By president of the court:

I would like to know if there are other witnesses in rebuttal?

By judge-advocate:

We have no further witnesses in rebuttal, but we have testimony—evidence—which we would like to introduce in rebuttal and we would like to ask the pleasure of the court in this matter. To be frank, it is the report of the ordnance experts who examined microscopically the shells and bullets picked up in Brownsville. I have not seen this report; I don't know its evidential value and, as the court remembers, a newspaper account of this report appeared in the daily papers about six or seven days ago. At once I telegraphed to Washington for a copy of this report. It was four days before I received an answer—day before yesterday I got a telegram from the authorities in Washington that this report would be mailed, with the impress seal of the War Department upon it, as soon as received from them by the Senate committee. That, as I say, was two days ago. A few moments ago a telegram was placed in my hands which reads as follows: "Does placing of Major Penrose on stand indicate close of defense? Otherwise, when may it be expected? Do you introduce evidence in rebuttal?" (Then follows the important part of the telegram, to my mind.) "Advise office without delay; important letter mailed you to-day." Signed "Davis, Judge-Advocate-General." What is the import of that letter I can not say.

By president:

In due course of mail it will not reach here for three days; is that correct?

By judge-advocate:

Yes, sir; at least three days I would say.

By counsel:

Now, may it please the court, we take the same stand in regard to that as we have in regard to everything else, that unless he can produce the witnesses here and subject them to cross-examination we shall object to the introduction of any new evidence, and this is certainly accumulative evidence and is open to the same objection as the other. We have been informed there was only one more witness and the prosecution would rest its rebuttal evidence—and any evidence about that would not be rebuttal.

By judge-advocate:

We admit that; concede that much to counsel, that it is not rebuttal evidence—but we plead it is proper, an introduction of this kind, on account of its being newly discovered matter. Our not being able to get the shells, as we have said, has put us in an embarrassing position, and this would certainly be the next best evidence and very strong besides, and comes in under head of newly discovered matter.

know how long we will take, probably not more than an hour, possibly an hour and a half, as far as the defense is concerned; we both wish to have something to say to the court.

By president of court:

I am instructed by the court to announce in reply to the request of the judge-advocate that delay will be granted to await reply to the following telegram, which he is directed to send immediately, addressed to the Judge-Advocate-General, etc.

"Your telegram notifying of important letter received. All witnesses in rebuttal have been examined, and counsel are now ready to go to argument. Court desires to be advised if important letter relates to this case, and if it is desired that prosecution shall present it. If not, argument will commence tomorrow, Saturday. Please wire answer immediately."

The adjournment will be until call of the president.

By a member:

As I understand it, the judge-advocate opens up the argument; I would like to know when he will be ready to begin.

By judge-advocate:

The assistant and the judge-advocate will be ready to take up the argument as soon as laid down by the counsel. We are ready to begin, in other words.

By counsel:

If this court is going to contemplate receiving new evidence, we want to be heard in argument as to admissibility of that evidence before you come to a decision—we did not take up the question in argument at all. The position we are going to maintain, if I may state it briefly, in this: That in order to open up the case de novo—and this we claim would be opening it up de novo—it must be shown clearly, positively, distinctly, exactly, what the evidence will be, and is beyond a doubt evidence that is newly discovered and could not be discovered before, and it must be in form to be admitted before this court without any question whatever. And any report of the War Department—or any agent of the War Department on the subject of shells—or any stamp of approval of the War Department, of the Senate committee, is clearly inadmissible, and we shall argue that and be prepared to argue that, if the court contemplates doing that.

By president:

The counsel, as I understand, does not desire the telegram modified in any way; I think the telegram as now worded will bring out just what information you desire.

By counsel:

Personally we rather prefer the court would say the argument will commence at 10 o'clock to-morrow morning, because it notifies them just how much time they have to answer and, I think, you will be more apt to get a prompt reply.

By president:

In this connection I think it proper to say that the court feels that in the interest of all concerned the matter should be thoroughly cleared up.

(Telegram was read over, as directed sent.)

By counsel:

We would like to make this suggestion; that a full description of the matter and whether admissible in evidence and what form it is in should be asked for. I think it ought to be described, so you will be able to pass intelligently on it, whether you will wait or not. The mere fact that an important letter is coming would not warrant you, in our judgment, to delay. I think to incorporate the idea that the court wanted to know exactly and specifically what is coming, whether in form of evidence, etc.

By judge-advocate:

Unless my memory fails me, all the telegrams I have gotten from the Judge-Advocate-General in relation to this case have been so addressed to Captain Hay, judge-advocate of the department, that being my official address.

By a member:

I think, inasmuch as the telegram seems to relate to information regarding the court, I don't see any objection to its being sent, as directed by the court. I don't see how, in fact, the judge-advocate could say the court desires to know unless he sent it by direction of the court.

The judge-advocate was then directed by the court to send the following telegram instead of one recorded on page 2567 [1219].

JUDGE-ADVOCATE-GENERAL,
Washington, D. C.

Your telegram notifying of important letter received. All witnesses in rebuttal have been examined and counsel are now ready to go to argument. Court desires to be advised if important letter relates to this case; if so, its nature, and if it is desired that prosecution shall introduce further evidence, and if such evidence has been forwarded in form for consideration by the court. If not, argument will commence to-morrow (Saturday). Please wire answer immediately. Rush.

The court then, at 1.15 o'clock p. m., adjourned to meet at the call of the president.

CHAS. E. HAY, Jr.,
Captain, Acting Judge-Advocate, Judge-Advocate.

HEADQUARTERS DEPARTMENT OF TEXAS,
San Antonio, Tex., March 23, 1907.

The court met, pursuant to adjournment, at 10 o'clock a. m.

Present: All the members of the court and the judge-advocates. The accused, his counsels, and the reporter were also present.

The reading of the proceedings of March 22 was dispensed with.

The judge-advocate addressed the court as follows:

I have the following telegram to read to the court for its information:

WASHINGTON, D. C., *March 22.*

Capt. CHARLES E. HAY, Jr.,
Acting Judge-Advocate, Judge-Advocate, Department of Texas,
San Antonio, Tex.:

Letter contains names of persons alleged to have knowledge of facts and not yet called as witnesses. It was written by C. H. Thorn, of Brownsville, Tex. Report of ordnance experts will be mailed as soon as received from Senate committee—probably Saturday morning.

DAVIS, *Judge-Advocate-General.*

8 a. m.

And another telegram:

WASHINGTON, D. C., *March 22.*

Capt. C. E. HAY, Jr.,
Acting Judge-Advocate, Judge-Advocate, Department of Texas,
San Antonio, Tex.:

Report of ordnance experts just received and mailed.

PORTER, *Judge-Advocate.*

8.03 a. m.

We have received a report of the ordnance experts, which is not under the impressed seal of the War Department. It will be perhaps Tuesday morning

question the sincerity of the man that made that report, but I ask upon what facts, what primary facts, of his own knowledge, that report was based. From the time he heard that firing on the 13th of August until he visited Major Penrose there was in his possession not a single fact that warranted that report. He had seen—and he had seen simply—one dead horse on the streets of Brownsville, Tex., and that on Elizabeth street. He had seen a pool of blood under a lamp-post. He had not—and I quote from the evidence—seen even the dead body of Frank Natus (p. 352 [174] of the testimony of Major Combe). He had not seen the wounded Dominguez (p. 354 [175], testimony of Major Combe). He had not picked up a single corroborative bit of evidence in the way of shell or clip or bullet (pp. 355 [176], 525 [253-254], and 533 [258] of the testimony of Mayor Combe).

In addition to what he had seen, he had heard firing. As to the character of that firing, I read from the evidence: "Q. Did you, in the time you were passing from the point you indicated just outside your house after the firing had been going on three minutes, hear any other shots mixed up with this musketry firing?—A. I heard those pistol shots—that heavy sound—which impressed me as coming from a .45 caliber. I was right at my house when I heard that. Q. Did you hear any others?—A. I heard a pistol evidently from a small caliber and one automatic. Q. What fixes this automatic firing in your mind?—A. The noise that it makes—that sharp popping noise. Q. It wasn't due to the rapidity of the firing?—A. Yes, sir; the rapidity of the firing also. Q. You say musketry firing. What do you mean by that?—A. Well, it sounded to me like the sharp, whiplike crack, or, if I may use the expression, it sounded like the old Mauser fire or the Krag-Jörgensen; but I wish to impress the court that it was the Krag-Jörgensen I heard most. Q. Can you distinguish at that distance between a Winchester, for instance, and a Krag-Jörgensen?—A. If there were that number of Winchester rifle shots of the high-power caliber, I don't know that I could" (pp. 452 and 453 [p. 221] of the cross-examination of Major Combe).

On page 537 [259] of the examination of Major Combe: "Q. Now, which one of your policemen did do any firing that night?—A. It was reported to me that Genaro Padron did. Q. Where did he fire?—A. Somewhere on Washington street. Q. How many shots?—A. I do not remember. Q. In what direction?—A. In the direction of the garrison."

Page 542 [261] of the examinatfon of Major Combe: "Q. As a matter of fact there may have been a great number of shots by people outside of the police—I mean by people of the town?—A. There were quite a number of shots fired. Q. You don't know what direction those shots went?—A. No, sir; I couldn't say. This firing was mostly toward rifle firing, as I have characterized it."

Then upon what was that report based that was made by the mayor to the commanding officer of Fort Brown? It was based almost entirely upon hearsay, and that hearsay the inflamed utterances of a mob of some 150 to 300 citizens of a town whose population is, to say the least, heterogeneous. And that mob was armed, as the mayor testified, with rifles, shotguns, pistols, and whatever else they could get hold of, and they avowed their intent to go up and attack the post of Fort Brown. And at the time the mayor made this report, what knowledge was in the possession of the commanding officer which entitled him to contradict that report? There was, in the first place, the evidence of his own senses as to the location of that firing; there was, from the instant he left his door until the time he had conversation with Mayor Combe, a series of reports beginning with the report of Sentinel Hairston, including the report of Sentinel Howard, and concluding with the report of Corporal Madison. There were, in addition, reports of other members of the guard—Corporal Burdett and Sergeant Reid; further, the statement taken of a civilian witness who, from the standpoint of the commanding officer, was not an interested witness—and that was the civilian, Tamayo—who was in the best position to know whether or not facts reported by Mayor Combe were true. Furthermore, there were reports made to him by commissioned officers of his own command—and I say, as commanding officer, it was his bounden duty to act upon these reports or to disregard them at his peril. And there were the expressed opinions of all those officers—but above all there was in the mind of the commanding officer a full knowledge of the trust that was reposed in him by the members of that garrison; and that included not only members of his command—enlisted men—but it included every inhabitant—men, women, and children. *And he had a full* sense of his responsibility as commanding officer

to the court, but to make our defense complete and to make it of record their testimony was brought before it.

This first specification closes with daylight on the morning of the 14th of August; but the vigilance of Major Penrose did not close at that period, and with zeal and steadfastness he continued his efforts, both of detection and restraint, using every legal means of detection within the power of a commanding officer, and using such stringent measures of restraint that they have been criticised since. He retained the members of his command within the limits of the reservation from the period 13th of August to the 24th of November. He opened up every avenue to investigators sent down there from Washington, or by the people of Brownsville, and he cooperated in good faith with every effort made by any investigator; and in the words of The Military Secretary, "through a trying period the situation for the time was both delicate and dangerous, but happily all danger was averted," and that all danger was averted was due to the efforts of this accused major of the Twenty-fifth Infantry.

And in a period beginning with the events of the 13th of August and closing with the orderly discharge, under unhappy circumstances, of three companies of his battalion he conducted himself in such a manner as to elicit a generous and deserved tribute from an officer of the Inspector-General's Department—"that he had conducted himself in a manly fashion under trying circumstances, although subjected to much undeserved abuse."

But above all, may it please the court, he received high encomium, addressed in a communication to no lesser authority than The Military Secretary of the Army, and a high tribute was paid to his good judgment; and that encomium was from one who, from possession of the facts and from experience judged in point of time and in character second to none in the Army of the United States, was well qualified to speak—and that officer was the immediate commander of this post commander. He was his department and division commander.

The counsel for the accused then addressed the court as follows:

May it please the court, I would that I could make my argument as terse and as telling as that of my colleague and that my subject permitted my doing so. Unfortunately the nature of the allegation I purpose discussing will not permit of such brief treatment. However, I promise you I will be as brief as I feel is consistent with the importance of the subject I purpose discussing.

And, first, I wish to direct the attention of the court very briefly to the history of the evidence which culminated in the charges against Major Penrose. You will recall, of course, that the occurrences referred to took place on the night of August 13 and 14, 1906. Ten days thereafter, or on August 25, the battalion of the Twenty-fifth Infantry was removed from Fort Brown, in Brownsville, Tex., to El Reno, Okla. Previous to this, on August 18, Major Blocksom, an inspector, was sent down to examine into the evidence, and submitted his report on August 29. Thereafter, or sometime in the early part of October or in September, Lieutenant-Colonel Lovering, of the Inspector-General's Department, was sent down to make an inspection at El Reno, and submitted his report dated October 4, 1906. Thereafter, to wit, about November 20 to 24, Companies B, C, and D, composing the battalion in question, were mustered out of the service of the United States. On December 3 United States Senator Penrose introduced a resolution for investigation of the alleged, or so-called, Brownsville affair, which brought the matter into the lime light of political discussion. On December 5 the President of the United States recites the fact that the report of Major Blocksom and General Nettleton's letter left him in a state of uncertainty whether officers of the battalion of the Twenty-fifth Infantry are or are not blamable, and on the following day, December 6, the matter was referred by his private secretary, Mr. Carpenter, to the General Staff, calling for immediate attention in regard to the officers. On December 14, 1906, the General Staff, after interviewing General Garlington and Major Blocksom, recommended specifically that Major Penrose, among others, be brought to trial. This recommendation was concurred in by the Judge-Advocate-General of the Army, in spite of the fact that he had previously stated in an official report that no charges would lie against this accused, and in spite of the fact that General Garlington, as Inspector-General, had expressed, in express terms, the same opinion. You will recall that Major Blocksom, on or about December 4, when summoned to Washington to testify before this committee of the General Staff,

events themselves on the night of August 13–14, and that he had knowledge of the report from Mr. Evans, and that he knew of the inflamed feeling existing in the town of Brownsville as a result of that report. The next allegation is that "he did nevertheless fail to give Capt. E. A. Macklin, Twenty-fifth Infantry, officer of the day, any orders requiring special vigilance on his part or on the part of the guard, or to make frequent inspections or any inspections during the night after 12 o'clock, and that he did wholly fail and neglect to take or order sufficient measures or precautions to hold at the post the men of his command, or in any manner to watch, restrain, or discipline said men, by reason of which failure certain men of his command, to the number of 12 or more, were enabled to assemble, and did assemble, armed with rifles, and did proceed to the town of Brownsville, Tex., and did then and there shoot and wound and kill certain citizens thereof."

You will note, and I direct your attention as to that point, that there is a positive allegation that certain men, to the number of 12 or more, of the command at Brownsville did assemble and did proceed to shoot up the town. Now, before I proceed to discuss the proof, I wish to call your attention to the fact that this allegation being in the specification, it must be proved to this court by the prosecution beyond a reasonable doubt, and in this connection I wish to advise you that whatever may be your individual opinion, based on anything you may have acquired outside of this court, the law conclusively presumes that you will satisfy yourselves beyond a reasonable doubt, which must be based upon the evidence that has been introduced before you in this trial, and if this court will bend its mind toward that particular feature, we have absolutely no fear of the result. Our military text writer, citing from United States Supreme Court Report, in United States *v.* Harper, 33 Federal, page 471, says: "A reasonable doubt is an honest, substantial misgiving, generated by the insufficiency of the proof," and goes on with a long discussion. I simply cite that much to call your attention to the fact that whatever doubt there may be or whatever proof there may be must not be from any preconceived knowledge you may possess, but from what has been shown you in evidence in this court.

Now, we are prepared to state that certain things have been clearly and fully established in the evidence in this case, and I will proceed to recite them. First, it is clearly established that certain shooting occurred at Brownsville, Tex., on the night of August 13–14, sometime between 11.50 p. m. and 12.30 o'clock a. m. Second, that this shooting took place generally along the alley between Elizabeth and Washington streets, in the city of Brownsville, known in this court as Cowen alley. Third, that certain houses were fired into, and they are the Cowen, Garza, Leahy, Yturria, and Starck houses; the telegraph office, Miller Hotel, and Tillman's saloon. Fourth, a man named Frank Natus was shot and soon after died. One Dominguez, a lieutenant of police, was shot in the arm or wrist and his hand was subsequently amputated, and the latter's horse was also shot and killed. Fifth, the actual number of shots being unknown and ranging from 30 to 500, the latter number being given, I believe, by Mrs. Leahy. The greater number of these shots being from high-power rifles, mixed with other shots, some of which certainly were from pistols. Sixth, immediately after the shooting an assemblage of from 150 to 300 men, of whom at least 150 were armed, was addressed by the mayor of Brownsville and advised to disperse to their homes.

Now, the nature of proof that has been adduced to substantiate this is: First, as to certain shells and ammunition alleged to have been found at various and divers places in the city of Brownsville. Second, the evidence of eye witnesses who either saw or heard what was taking place that night. And first I wish to direct your attention to the question of the shells, bullets, etc., that were alleged to have been found there that night, and first I wish to say—and the record supports me out in it—that in spite of the fact that testimony has been offered in regard to this there has not been introduced a single shell or ammunition nor bullet nor bandolier that were alleged to have been found in Brownsville at or immediately after this event. As I recall it, the only bullet specifically identified by Major Blocksom, who was the chief witness, was picked out some three or four months after the event. I don't recall the page, but I am sure that is the evidence.

Now, then, a moment in regard to Major Blocksom's identification of that particular bullet. He said that it was—it's true he said it was a Springfield bullet, but he said, "I found this out afterwards"—he did not know it at the time and he did not know it of his own knowledge, his evidence will secure that clearly to our mind, on that particular point; so that, in so far as all

George W. Rendall, you will recall, stated he saw men moving about inside the reservation; he recognized their clothing, knew they must have been soldiers; he saw them jump over the wall up at the sink of B Company; testified this wall was white, but had had lead color put in it. But the color of the wall, while this subject is up, you will recall is definitely fixed and undisputed to be lead color. We have measured the nearest distance at which he could have seen those people and it could not have been short of 50 feet—and in this connection you will recall Mr. Rendall has but one eye and sees rather indifferently out of the other. He is 72 years old, and we tested his vision here in court and he could not pick out colors here in this court room at a much shorter distance than the distance that day. He very naively, but very frankly, admitted in his evidence—and he had given his evidence three separate and distinct times—as follows: "If my three evidences were put together side by side they would not correspond at all." Now with that naive admission, added to the fact that he says he is hard of hearing and that his eyesight is bad (pages 30 and 31 [17, 18]), I do not think I will take up your time to discuss it further in view of the evidence submitted to the record—not to convince this court in any respect, because I take it that men of your experience who have been out at night hunting coons or 'possums or other game know just how far you can recognize people by starlight and how far you can determine colors.

Mrs. Rendall came on the stand. Looked from the identical window as her husband; she located shots on the other side of the parade, farther from the telegraph office. She claimed distinctly that the lights from the gate of the garrison didn't extend to exceed 6 to 8 feet, and she swears she did not see the color—could not determine the color—of any of the men that she claims to have heard moving about in there, nor could she see the complexion, yet she had two eyes and was some ten or twelve years younger than her husband. She also swears she heard this roll call just outside of her house, near D Company, was behind the wall, and she was very positive only 12 or 15 men answered their names, and you will recall her manner in answering to this fact.

Following that was our Mexican friend, Teofilo Martinez; and I want to go on record as saying before this court, frankly, clearly, flatly, unmistakably, that there is no inferior race on the face of the earth that I have ever come in contact with that can tell all the truth—some white people can't—but there is no inferior, uncivilized, uneducated race that can come before a court of American officers and tell all the truth. And in this connection wish to say in all frankness, as you know, the only way and the proper way to determine the truth from that class of witnesses is from your own good sense and judging the people as they appear on the stand.

At this point the court took a recess until 11.30 o'clock a. m., at which hour the members of the court, the accused, his counsels, the reporter, and the judge-advocates resumed their seats.

Counsel continued:

This brings me to Teofilo Martinez, the Mexican caretaker of the Yturria house, who, you will remember, like the other Mexicans who appeared before you, made it a point to flatten himself out in the brick house in rear of the building on his stomach, where he remained for the rest of the night, and his evidence is, therefore, absolutely immaterial.

Following him, however, was a Mr. J. P. McDonnel, a carpenter, and if you will recall, Mr. McDonnel was standing in the alley or Fifteenth street, midway between the alley and Washington street. He arrived there early in the proceedings, and he swears positively that no men could possibly have jumped that wall without his having seen them. If he is to be believed at all, he saw those men come out of the gate, which had no light upon it, at Elizabeth street, come up Elizabeth street, and commence firing when they got down to the Cowen alley. The court will recall there were a few discrepancies in his evidence, and in explanation of these, especially with reference to the Citizens' Committee, he remarks he was a "little off the next day," and therefore he did not tell the Citizens' Committee about the shooting from the barracks. In this connection I wish to call the court's attention to the fact that this gentleman picked up a Mr. Tillman at or near that point. Mr. Tillman is the owner and proprietor of what is known as Tillman's saloon or the Ruby Saloon, and it is significant that the next time we see Mr. Tillman he is passing down Thirteenth street in front of the Miller Hotel, and this occurs, mark you, before the firing had commenced at the Miller Hotel; and in support of this I refer you to the evidence of Mr.

men did not go up toward the light at all.) I said: "Do you remember that?—A. Yes, sir; if it was down there. Q. Now, you state you saw two negro soldiers; how do you know that?—A. Because they were dressed in different clothes from what a citizen would be wearing. Q. Did you say that, sir?—A. Don't soldiers wear different clothes from citizens? Q. Did you so testify?—A. Yes, sir; if it is there, I expect I did. Q. What was their color?—A. I could not tell; it was dark." We quote that simply to show the value that can be placed on his evidence, and especially in the light of his subsequent evidence in regard to vision.

Mr. Bodin was his fireman, a cheerful sort of individual, who recognized men at 100 feet, and who could see their hats were split in the middle, and at the same distance of 100 feet in a dark starlight night; but he would not swear they had cords on their hats.

I return to our friend Dominguez. His evidence shows he rode down Fourteenth street; that at a distance of 125 feet from the alley he got off, leisurely cinched up his horse, or rather cinched up the horse in five or six seconds while shooting was going on; he then mounted, rode down Washington and Thirteenth streets, and the prevailing thought in his mind, and the only thing we could get out of him was, "I commenced to holler to the Miller Hotel to wake up; that the colored soldiers were firing into the houses and killing people, and to wake up and defend themselves."

Thereafter he goes on to describe with great accuracy and clearness the position in which he found himself. He was going down Thirteenth street with the men behind him, and you will recall he held the reins in his wounded hand, right hand, and was glancing back over his shoulder with the other. Subsequently his horse stumbled around the corner of Thirteenth street 20 feet from the corner of the door of Mr. Wreford's room, second door, and from this point he sees around the corner, mark you, and sees these same negro soldiers tiptoeing back toward the alley, just on tiptoe, going very easily. Subsequently he admitted that his vision was impaired, he could not stand light, and therefore he deliberately and carefully places his back toward the light so he could see these men more clearly; and, mark you, the distance was at least 120 feet. I am from Missouri!

The next gentleman that paraded before you was a Mr. A. Littlefield, a man who, when asked what his employment was, gave the distinct impression he was a member of the police force of Brownsville—and a good representative, I presume—and when we got his employment finally figured out, previous to August 13 he had been employed in one job of carrying a prisoner to jail that consumed a little less than two hours, and the other about eight minutes. And this was the only job this barroom loafer could present to you for at least eight months previous. He is spurned by the Citizens' Committee, Purdy committee, by the Blocksom committee, and properly, and yet he is brought up here as a satellite of our friend Creager, a man whose evidence is the worst case of smear I ever saw presented before any court. A trained lawyer, a United States commissioner, who has zeal in one thing, if nothing else—in acting as unpaid counsel for friends of his in the Army, who had treated him with nothing but kindness and consideration. And with this remark I pass from his evidence without further remark.

Doctor Thorn is the only man—with the exception of our friend Elkins, who, as you will see later on, is undoubtedly a clairvoyant—is the only man who recognized these negroes as such by their voices. I don't think I need to ask this court, and certainly those members who have served in the South, whether or not they would be willing to find a man guilty of murder on evidence of that nature. If I am not mistaken, I have heard a good many men of very white color, indeed, in the South, whose voices you could not possibly distinguish from that of the average black man or negro who works and has lived in the South all his life. It is a fact that the negro's voice is not coarse and rough, but, as a rule, is musical, and any man who lived with them before the war will bear me out in that statement. And he admitted it, if the court will recall, that there were lots of white men in the South who talked just like the negro.

Now, the next man who was paraded before you was Mr. Ygnacio Garza. He also not only flattened himself out on his face on the floor, but took the family and placed them in the same position. The only thing in his evidence that was of value for the prosecution was the fact that he claimed to have heard—six or eight months afterwards—men going back down the alley. It is an afterthought, acquired or accumulated during the past six months. He had not testified to anything of the kind previous to that date, as we can find.

those men to have fired into the Cowen house from that position, and if they had been at the position from which those shots were fired, according to evidence of Major Blocksom, this young man could not have seen them any more than he could have seen them in C Company barracks on the gallery. This, assuming he does not have that divine insight that enables him to see by the flash of the gun, as he subsequently testified—in fact, he testified that on page 977 [pages 462 and 463], and I simply want to read his evidence on that point—of the distance at which he could see: "Q. You are sure about that?—A. Yes, sir. Q. And you say that gun was so distinct that you knew it was bound to be a clip gun?—A. Yes, sir; I could see the gun plain enough to tell it was a Springfield rifle. Q. What was there about it that enabled you to tell it was a Springfield rifle?—A. It had a knob on it that they worked it by. Q. You could see the knob on it?—A. Yes, sir; when he fired I could. Q. What light enabled you to see the knob?—A. When he fired, the light from the gun. Q. The flash of the guns, eh?—A. Yes, sir. Q. Then you must have seen what direction they fired exactly?—A. Yes, sir; he fired in the direction of the Cowen house. Q. Was the flash between you and the man that was shooting?—A. No, sir; it was to the side of the man; it was to the right of me from the man's shoulder. Q. The flash was to the right of you?—A. Yes, sir; he was shooting this way, and I was over this way (indicating), and the light from his gun it made a very good light—from both guns together—shooting as fast as they did. Q. And they were both firing as fast as they could?—A. Yes, sir. Q. And they were firing, as I understood you, directly into the Cowen house from across the alley?—A. They were firing toward the Cowen house. Q. You said this afternoon they were standing about where those steps under the window or door are?—A. Yes, sir; that is about 6 feet down. Q. Now, then, you are very sure that it was by means of the flashes of the rifles that you saw and could distinguish the knob that works the breechblock of that piece, could you?—A. Yes, sir; by the flashes I could see the make-up of the gun. Q. Well, tell the court what the make-up of that gun was. Give us the description of it. Tell how it differs from some of the other guns you have seen.—A. It wasn't a very long gun, and a heavy gun—heavy-looking build—and the wood went nearly to the end, or in an inch or two of the end of the gun—I mean the end of the barrel. Instead of a hammer it had that knob on it and had a strap on it, or sling. Q. Do you mean the gun sling?—A. Yes, sir. Q. And you could distinguish where the wood stopped on it by the flash of the gun, could you?—A. Yes, sir. Q. And you could see the strap?—A. I could see it; I could see the straps. Q. I mean you could see the gun sling—the leather strap?—A. Yes, sir; and then in front of the Cowen house I could see the straps plainly without the aid of any lights whatever."

And he is supported in this by Mrs. Leahy, who you will recall said she saw the blue steel by the flash of the guns. Now, he fixes that distance, and he is reasonably accurate in that, at which he saw these people at 30 to 40 steps. It is actually a measured distance of just about 80 feet. His faculty or ability to distinguish color is also remarkable, and I can not refrain from reading it. "Q. Could you distinguish light blue from dark blue that night in the alley while you were standing in your window?—A. I don't think I could distinguish that; but I could distinguish blue from black, though, I think. Q. Now, you said in your evidence to Mr. Purdy, as follows: 'Q. How were they dressed, and what did they have in their hands, if anything?—A. Both of them had guns—rifles—and they were dressed in yellow khaki pants, and one of them had on this light-colored army shirt—light blue—and I think the other one had on a coat. I am not sure.'—A. Yes, sir; one was dressed in a light-blue shirt—that is, not like the navy-blue uniform. Q. You could distinguish that while they were still over in the alley?—A. Yes, sir; he had it unbuttoned in the front. Q. Could you see the color of the skin through it?—A. No, sir; he had on underclothes. Q. What color were they?—A. White, I believe. Q. Do you know?—A. I didn't pay any attention to them."

And this is the gentleman who said he could distinguish the sound of the voices, and I asked him: "Q. Well, what kind of a voice was it? Tell the court what enabled you to distinguish them as being negroes?—A. It wasn't a very coarse voice, but kind of a long voice; I can't describe the difference."

Now, you will recall this young man subsequently went down with Mrs. Leahy in front, and they claim to have identified, or he did, at any rate, claim to have identified one of these men as being the man who was leading the gang going down the alley. It may be, as I say, on the principle that an

make an "if," and it should be a large one—if it is true that this man Cowen went downtown, was absent for an hour and a half from his family, and purchased ammunition for his rifle, and had that rifle with him, it's not hard for the imagination to picture out some reason why. It is unknown to the accused, unknown to the prosecution, so far as the evidence shows, some reason why Mr. Cowen's house should have been shot into.

Now, the evidence we have submitted is from the Government side. It includes that of Howard; it includes that of Tamayo; that the shooting was done from the other side, and the evidence of the officers I am not going to dissect, analyze, because it is before you, and you will remember it very distinctly—that is, as to the shooting. But I will say this much, that in my humble opinion, and I have studied the question carefully, if certain citizens of the city of Brownsville had been put on the rack six months ago, as the members of B, C, and D Companies of the Twenty-fifth Infantry were put on the rack; have been harassed, annoyed, and dragged from pillar to post; questioned and cross-questioned; deprived of privileges, and subjected to all sorts of indignities in one way or another, I doubt very much, as an American citizen, whether they would have stood the test as well as these negro members of the Twenty-fifth Infantry.

Now, gentlemen, what did Major Penrose say—and that's the crucial test—about what he knew of the feeling of resentment on the part of members of his command on the night when this is alleged to have occurred? He knows—he knew of the various and divers cases that he recites afterwards in his letter and about which he then believed—August 15—he then believed there was ground for resentment. He tells you freely, flatly, and squarely that he knew of no resentment. The Tate incident was under investigation, and I submit that any reasonable man as a post commander, when he has a matter under investigation with a member of a brother or sister service of the Government, is not going to assume that his men are going to have resentment about that until the matter is settled.

Now, the only other incident in that that's worthy of consideration is the Evans incident itself. Is that an incident that's going to create resentment on the part of the enlisted men? Certainly not. Not a resentment directed toward Mr. Evans, because there is nothing to show they went anywhere near Mr. Evans. And, by the way, I want to speak of a—Mr. Evans came before this court and gave pretty straight testimony, and he is the only man of all others, the only man, in fact, of all those witnesses, who was close enough to have identified a single negro man that night. If we believe him, and we have a right to believe him in certain parts of his evidence, then he did see a man in recognizing distance that night. But you will recall his evidence showed this was thirty or thirty-five minutes after the firing began. It was eight, or thereabouts, minutes after the whole thing was concluded. Now, then, it is a fact that there were some 6 or 8 other negroes in the town and specifically 2 negroes, you understand, who kept a saloon over there known as Allison's saloon, any one of whom might have been—and I submit probably was—one of these negroes than any other negroes of this command who had long before that been formed and out on the wall. A reasonable man can't have, and there isn't anything to show resentment toward this man Evans and his family, so it must have been the bars that produced it all. But it is limited to two incidents, pure and simple, and there is no evidence to support—on the contrary, so far as Major Penrose knows—the feeling of resentment in regard to all these incidents, including the separate bars, was that the men had decided to accept it and it was all right, and he took pains, mark you, to find out about it. It is true, and we admit it, that Mr. Evans came in there and gave Major Penrose the first notice he had that his wife had been assaulted. I have said once before to this court that there isn't one scintilla of evidence to show she was assaulted. I don't believe it, and never will. Suspicion was against it, but Major Penrose, like any sensible man who knows the sentiment when a negro is alleged to have assaulted a white woman, took the precautions that we think any post commander would have taken immediately to see that his passes should be cut off that night. They were cut off at 8 o'clock, and he took unusual precautions, mark you, to see that members of his command were back in the post.

It is alleged he gave no orders to Captain Macklin. Did he? He told Captain Macklin, as officer of the day, passes would be revoked at 8 o'clock, when all men would be in; consented to Captain Macklin going down himself to check up. And this order of Captain Macklin was given to the guard, and we

that command when reported that they are all in? Why should he? Or to restrain them when they are all in?

Now, then, just one final thing. It is alleged that by reason of this failure to do all this Major Penrose is guilty of this alleged assault. It is a direct result from that. It is so absurd that I am not going to argue that proposition at all. Any man—I don't care who he is, and I don't purpose to apologize for making the remark—any man, I don't care what his experience or what his intelligence, who would pretend to know or foresee what was going to happen that night, possesses a divine insight that you can not expect; and I hope to God the day will never come when you will expect such insight from commanding officers of posts.

I have been, may it please the court, in exactly the same position. The very night Major Penrose telegraphed me I was sitting at my table eating dinner, and had just finished reading his telegram, when my telephone rang and I was informed that 80 to 100 of my men were down in the city of Columbus, Ohio, "raising hell," as somebody has said. And they were. Fortunately, the majority of them were recruits, some old soldiers mixed in with them. Fortunately, my noncommissioned officers were not involved; it was early in the evening; it was dinner time, and I could get at these men, I could reach them by telephone, and we managed to catch a few of them; but what would have been the case had I been wakened in the middle of the night, without one single word of premonition? What's the measure of responsibility you are going to hold me to? And I tell you frankly that neither I nor anybody would have detected any men; but we did detect them and that we did it is a matter of history, and we charged the damage to each man we detected and charged it up on the roll under the article of war covering that point.

One word more, and I am finished. In connection with this foresight I want to call your attention to remarks made by General Roberts, now on the retired list, who investigated a similar case: "The discipline of Fort Bliss may be classed as excellent; Captain ——— is an exceptionally sensible and efficient officer, and yet this trouble occurred and will perhaps occur when least expected at some other point; and human foresight can not guard against it." To support this and to show you the measure of responsibility Major Blocksom had at the time he made this inspection, I quote you from what is in evidence: "Although the act probably preconcerted, do not think commanding officer could have foreseen it." And later you will recall he said: "Major Penrose was doing everything he possibly could to detect the alleged criminals."

Before I leave it, I believe I neglected to call the court's attention to one thing. The only evidence found by Major Penrose's agents of the actual shooting was certain shells. They were found at the mouth of the alley, and they were found in a little place whose radius is less than 15 inches, as I recall it. That fact is significant to me to this extent: That these were certainly thrown down there for some purpose, there were four or five clips and some seven, eight, or nine shells, the two didn't fit together at all; that is, the number of clips didn't correspond to number of shells at all, and certainly neither of them in the position in which they lay that night would correspond to shells that had been fired, because, as you know, shells thrown out from a gun in a natural order would have scattered all around that section, and these were absolutely the only shells found by members of that command, although they searched along the galleries, all inside there, and up and down that wall, so that that evidence is certainly negative and probably leans toward the side of the negroes.

There is one phase of this that appeals to me as a soldier, and I am not going to stop my argument without calling attention to it, and that is this: The Government of the United States, for good and sufficient reasons, has seen fit to organize four regiments of colored troops. The Government of the United States, for good and sufficient reasons, has organized certain troops of Filipinos and of Porto Ricans. These men continue what we call an "inferior race," measured by our standard of civilization. But we become a world power, and, while I recognize and appreciate that, certainly during this generation, there is going to be a prejudice against the negro, I certainly hope, for the good of this country—and we are going to need it soon—I certainly hope, for the good of this country, that the time is not very far distant when the uniform of the United States will protect the black man or the brown man, just as it does the white man. That prejudice is of that general nature that we all recognize against the negro race and against inferior races, but particularly against

troops had threatened to use ball cartridges against them at maneuvers, and that they themselves were not to be sent to the maneuvers at Camp Mabry for fear of trouble. The Twenty-fifth Infantry had served some time at Fort Niobrara before it was ordered to Texas. Target practice was held only a few weeks before the troops left—abundant opportunity for individuals to have secured plenty of ammunition without detection.

Then came the journey to Texas and to Brownsville. There the soldiers found separate bars put up for them in saloons—they who, at Valentine, Nebr., had never been accustomed to any such discrimination on account of color. It was only a day or so before the entire command felt the changed condition of affairs. Scarcely any of them ever went to saloons owned or operated by white men after the first few days. They patronized the Mexican saloons instead, until one of their own comrades, just before pay day, and after being discharged from the service, started up a little saloon not far from the limits of the post. Here the soldiers congregated on pay day, two days before the shooting, and doubtless discussed conditions with fullness of heart and sadness of spirit. The Newton-Tate affair, Baker-Reid affair, the Adair affair, and others doubtless made a deep impression upon the men concerned, and to a lesser degree, possibly, upon their friends and comrades; but there is no doubt there was an undercurrent of feeling in the command at this time and that the things were talked over among the men. Human nature is the same, whether a man be white or black, and no man will stand to see what he thinks his rights trampled upon without having a deep feeling of revenge. All the white men concerned in the three cases just cited were customs officials, and it is but reasonable to believe that against that class of men there was a decided feeling of resentment on the part of the soldiers. The men did not like Brownsville after they got there; that much is certain. There has also been some evidence introduced to show that Brownsville did not particularly like the colored soldier, even before his arrival. Be that feeling as it may, there is no doubt but that after the attempted assault upon Mrs. Evans the feeling of the townspeople—not only against her assailant, but also against his comrades—ran very high; so much so that the mayor of the city advised the commanding officer of the post to keep his men in the post that night.

At retreat on the evening of the 13th of August orders were issued for all men to be in the post at 8 o'clock. Patrols were sent out from each company and the guard and all men found outside ordered back. Corporal Wheeler himself ordered back 20 or 30 men. The men doubtless knew that the issuance of this order was the result of feeling against them in the town. The large majority doubtless obeyed the order without any more grumbling than that to which every soldier, white or black, believes he is entitled. Others doubtless grumbled and growled considerably more, and some grumbled and growled about it long enough and strenuously enough to finally cause some of the men, mainly and in all probability some of the men of short service, who had never lived in the South before, to make up their minds to show the townspeople a thing or two about shooting. Doubtless even before this time there were some few men in whose hearts the desire for revenge upon the townspeople was great who had planned to do some shooting on their own account that very night. However that may be, at or near midnight, August 13, 1906, were fired the shots that, like the first shot at Lexington, were only too soon to be "heard around the world."

There are some hundreds of pages—plenty of evidence—to show beyond doubt that the main shooting began in rear of B and C Company barracks, inside the wall—that shots were fired even from the upper gallery of the barracks of Company B. A number of witnesses saw this band of soldiers, twelve or fifteen in number—saw them jump the garrison wall—saw them cross Fifteenth street and enter the alley. At the corner of the alley and Fourteenth street several others saw them plainly in the 50-foot street below. At the next corner they were seen, and their voices recognized as negro voices by a number of witnesses. Here it was that the mayor of the city picked up shells within two hours after the shooting, as well as others later on, almost in front of the house of Mr. Starck, the customs official living next door to Mr. Tate, against whom the soldiers had a particularly deep grievance, and these shells were all used and manufactured for the United States Springfield rifle, model 1903.

The band of raiders, it was apparent, had split at the corner of Thirteenth and the alley, part of them scurrying along to shoot up the Tate house and the others continuing up the alley to shoot into Tillman's saloon—the nearest

plains why it was that a larger number of bullets sufficiently unbroken to be readily identified was not found after the shooting.

As to the unidentified bullet dug out of a post on Elizabeth street by means of a bit and brace long weeks after the shooting by one of defense's witnesses, the testimony showed plainly that the bullet could as easily have been a .30-caliber Springfield bullet as a .45-caliber pistol bullet. It may have been either a regular steel-jacketed bullet which had become deformed—lost its steel jacket in passing through Tillman's saloon en route to its final resting place in the post, or it might have been one of the .30-caliber lead-guard bullets, such as C Company was provided with. A few lead filings extracted from a hole with a bit and brace hardly identify a bullet as to caliber, and the fact that these filings could be safely tucked away in a cigarette paper show they could not have been very considerable in amount.

Every one of the cartridges, empty shells, and clips found at dawn on the 14th in the now famous Cowen alley and in the neighboring streets was a product of the Government arsenal at Frankford. Every one of the bullets found, whether dug out of the dining-room door in the Yturria house, in the well top in the side yard, back of the mirror in the Cowen house, or from its cozy nest in the Garza cupboard, was a Springfield bullet, fired from a United States Army Springfield rifle, model 1903. The mark of the four lands, equally spaced, were too plain to be mistaken. The laymen and the army officers who examined them did not need any microscope to see there were not six land marks on them.

The United States Springfield cartridge, caliber .30, according to the testimony of some of defense's own experts, can not be fired from a Krag-Jörgensen rifle. No evidence has been introduced to show it can be fired from a Mauser, Manlicher, or any other foreign rifle that were quoted so freely by the defense in the cross-examination of some of the witnesses brought on earlier in the trial. And there was no Manlicher or Mauser, and but one Krag in all of Brownsville, unless our information is greatly at fault.

As has been shown by experts introduced by the defense, as well as the prosecution, it is practically impossible to purchase .30-caliber cartridges of any kind that have full metal-jacketed bullets at any of the principal gun stores or hardware stores in this city, and how much more difficult in Laredo and Brownsville.

Of the 11,161 rifles, model 1903, described in a Government publication, and which counsel for defense mentioned as having been shipped to the governor of Texas in 1903 or 1904, and which counsel assumed must have been Springfield rifles, model 1903, we have heard no more since counsel concluded to look further into the matter.

The .30-caliber Winchester rifle, model 1905, is the only rifle on the market to-day, so far as evidence or our information goes, that will even chamber the Springfield cartridge made for the United States Army rifle. This Winchester is the one that has not come into favor——

By counsel:

We challenge that statement. The evidence shows the reverse—that there are three others.

By judge-advocate:

We do not think the remarks of counsel are pertinent at this time.

By counsel:

May it please the court, the counsel has a right at any time to challenge the record for misquotation of the evidence.

By judge-advocate:

As counsel has said repeatedly, remarks of counsel or judge-advocate are not evidence.

(Assistant judge-advocate continued.)

In this connection I would like to state, too, that the label pasted on the side of a box of cartridges, and which contains the maker's guaranty for that ammunition and for certain well-known rifles when that ammunition is used in them, is no evidence whatever that those rifles ever have been made and put

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